

By Mr. Burling:

Q. And that is contrary to what you told me while I was examining you, was it not? A. It may be.

Q. Didn't you tell me you thought it very unlikely that such a conversation took place, and you had no recollection of it? A. By being asked again, it came to my mind it might have been.

Q. Do you recall His Honor questioned you about this particular point?

A. You understand the phrase, "His Honor"? I am referring to the Judge. A. Yes, sir.

Q. Didn't you tell His Honor that your memory was that no such conversation took place? A. If you say I said so, in being asked again, it came to my mind.

Q. If it comes to your mind, it means you remember something now that you didn't a few minutes ago. What is it you now remember about that conversation? A. As

I said, Mr. Burling, it reminds me of being in connection with certain fines imposed upon Wilhelm von

Opel, and that is—you have to understand, I never was and I never did any business with Wilhelm von Opel. So now if, for instance, Fritz would have decided to do anything, I don't know what, in favor of his father or whatever he pleased—

Q. Try to answer the question, won't you please?

The Court: He wants to know what has come into your mind now, since you last spoke to him about it. What is that is in your mind now that you did in 1935, or what was said about this agency?

The Witness: It may be that Fritz at some time, for the reason I just said, asked me whether or not I might act as a trustee. But I do not—

By Mr. Burling:

Q. Some recollection has come into your mind since I last examined you? A. Apparently, yes.

Q. Apparently. And I ask you what you can remember. Do you remember something now you didn't a half an hour ago? A. I am not familiar with this matter for years. In talking it over again and again—

Q. Do you now remember—and the answer is yes or no to this question—do you now remember something you didn't a half an hour or an hour ago—yes or no? A. Yes, but—

1318 Q. Thank you. What is it that has come into your mind within the past hour? A. That in some time there might have been a request, there might have been a conversation in which this usufruct business came up again.

Q. Do you have any memory of it, or are you just assuming it might have happened? A. No.

Q. So you don't remember anything— A. I couldn't put it in exact words.

Q. I don't want you to put it in exact words. I want you to answer my question: You don't remember anything now you didn't an hour ago, do you? A. Yes; in talking over it again—

Q. What is it you remember? A. That some sort of conversation—

Q. You just testified you don't have any memory of a conversation, but that it might have happened? A. Yes, it might have happened, in connection with the Wilhelm von Opel, that it might have been.

Q. Do you remember anything at all about what was said in such a conversation?

What? A. I couldn't possibly—

1319 Q. The answer is yes or no. Do you remember anything at all? A. I do not remember anything—

Q. I didn't ask you that. I said, do you remember anything at all? A. The only thing I can remember is that

Q. I might have asked me sometimes whether or not I would take care of this usufruct—something like that. But it is very vague.

Q. You have some recollection of that? A. Very faint.

Q. A very faint recollection. A. Because it wasn't none of my business.

Q. Fine; thank you. We have only four minutes. Please stop volunteering, and answer my questions.

Q. You have no idea of what was said, or who said it? Is that correct? A. Who said it?—Fritz von Opel.

Q. But you have no idea of what words he used in saying it? A. No.

Q. Have you any idea as to when this conversation took place? A. No. It must have been somewhere between 1934 and 1935, or so.

Mr. Burling: I ask if the reporter got the answer 1320 "no" to my question, "And so you have no idea as to what Fritz von Opel said?"

Mr. Gallagher: That wasn't the question. As to what somebody said, he said it was Fritz von Opel.

Mr. Burling: And I asked as to what words Fritz von Opel used, and he said no.

By Mr. Burling:

Q. In substance, have you any present memory as to what he said? A. It can have been only in the connection, as far as now I recollect, that whether I would take care of the usufruct, or something like that.

Q. Take care of— A. But I—

Q. Please stop volunteering. What does "take care of the usufruct" mean to you? A. If it would come into existence.

Q. What did Fritz say about it? A. My memory isn't too good.

Q. Isn't it the fact, Dr. Frankenberg, that you don't recollect anything now that you didn't remember when I examined you first, and that you decided to change your testimony as a result of the tone of voice employed by Mr. Gallagher? A. I think so. I think it is very natural that after having discussed the question again and being
1321 asked again, that you search more profoundly the last memory you have in your head.

Q. But you don't seem to have brought up very much, do you, as a result of this profound search?

Just tell us now, and I will have to stop. Give us as best you can what you have now gotten out of your recollection as the result of this profound search you have made. A. He might have asked me—

Q. He might, or I might be Santa Claus. What do you remember as a fact? A. Whether I would have—

Q. He asked you? Is that the fact? A. As I pointed out before—

Q. Just tell us what you now remember, will you? A. I do not remember it exactly.

Q. What is it you do remember exactly? A. Therefore I wouldn't make a statement, in words, what he said, as I cannot remember.

Q. As best you can, tell us what you do remember. A. That he asked me to, in case the usufruct should be in existence or should come into existence, whether I would then take care of this situation on behalf of his father.

Q. But he didn't say a word to you about holding the key on behalf of his father as his father's agent, did he?

A. No.

1322 Q. You are morally certain of that? A. I am absolutely morally certain of that.

Mr. Burling: Thank you.

Redirect Examination

By Mr. Gallagher:

Q. You have been holding this key in your possession, with the snares in the box, isn't that correct? You had a key for some during the thirties? A. Yes, for some time, but I couldn't tell you for what time I had it and for what time I didn't have it.

Mr. Gallagher: That is all.

Recross Examination

By Mr. Burling:

Q. But you are morally certain Fritz von Opel never asked you to hold the key as the agent for Wilhelm? A. To hold it?

Q. Yes. A. No.

Q. That is, you are certain he did not ask you to hold it for him? A. No, not as his agent.

Mr. Burling: All right.

Mr. Gallagher: That is all.

The Court: The witness is excused.

(Witness excused.)

1323 The Court: Tomorrow morning at 10 o'clock.

(Accordingly at 5 p. m. the trial was adjourned until 10 o'clock tomorrow morning, Tuesday, December 21, 1948.)

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PROCEEDINGS

1326 Mr. Burling: May I address the Court, Your Honor?

The Court: Yes.

Mr. Burling: Mr. Gallagher has asked me to make a statement for the record, to clear up something that happened yesterday, and I will be glad to do it:

I was examining Dr. Frankenberg as to whether he had not selected documents in 1937 from the files of Uebersee and brought them back here. I take it is conceded that he did do that.

The issue arose, however, as to whether a piece of paper had not been removed from the file. It was a loose paper we saw, and Mr. Gallagher tells me he cannot find it.

The statement I wish to make is that I make no point of it. I asked for the production of the paper solely for the purpose of establishing that Dr. Frankenberg did select documents. Since that is conceded, and since my friend tells me he cannot find it, I withdraw my request for the production of the document.

Of course, there is no contention that anything was removed intentionally, but was merely lost.

Mr. Gallagher: Thank you, Mr. Burling.

Further in explanation, if Your Honor please, the content of the document is merely described as some apparently loose paper that I never even did see.

1327 Mr. Burling: Your Honor, we would like to call Special Agent Kiefer, so that he may return to his duties in New York.

The Court: Is there any objection?

Mr. Gallagher: No, Your Honor. We had, in our designation of witnesses, that Mr. Ingoldsby was going to cross examine him. He is not here yet; but we have no objection to proceeding with him.

The Court: All right.

Whereupon, HARRY KIEFER, called as a witness in behalf of the defendant, and being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Baum:

Q. What is your full name, Mr. Kiefer? A. Harry Kiefer—K-i-e-f-e-r.

Q. And where do you reside? A. New York City.

Q. What is your occupation? A. I am a Special Agent of the Federal Bureau of Investigation.

Q. In what office of the Federal Bureau of Investigation? A. I am presently assigned to New York City.

Q. And how long have you been employed by the 1328 Federal Bureau of Investigation? A. Something over six and a half years.

Q. During the course of your duties as an agent of the bureau, did you ever have occasion to interview a Mr. Manfred Stansfield? A. Yes, I did.

Q. When did you interview him? A. I interviewed him on two occasions. The first interview occurred on June 4, 1947, in the New York office of the FBI, and the second interview occurred about August 9, 1948, at Mr. Stansfield's home in New York City.

Q. You were in the courtroom yesterday, were you not? A. Yes, I was.

Q. Did you see that Mr. Stansfield in this courtroom? A. Yes, I did.

Q. Now, referring to the interview in June, 1947, do you recall how long that interview lasted? A. Yes; it lasted almost two and a half hours.

Q. And during the course of that interview did you take any notes of what was said? A. Yes, I did.

Q. Is it a regular practice of the bureau for agents to take notes during interviews? A. Yes; normally in a case that is at all involved or where the interview will last for

any length of time, notes are usually taken.

1329 Q. And what is the purpose of those notes? A.

Well, I imagine you would have two purposes—

First, in order to obtain the facts, with the idea in mind of preparing a report which will later be submitted to the defendant.

And, secondly, from those notes, normally, a statement may be drawn, dictated to a stenographer, and then submitted to the witness or the person being interviewed, for his signature.

Q. Did you request Mr. Stansfield to sign his statement?

A. Yes, I did.

Q. Did he sign one? A. No, he did not.

Q. Now, what was the general subject of this interview with Mr. Stansfield in June, 1947? A. Generally I questioned Mr. Stansfield concerning the sale of the Adam Opel Automobile Company, some of the negotiations in that connection, to the General Motors Corporation of the United States.

Q. And in the course of this interview, did Mr. Stansfield make any statements concerning the capacity in which he participated in that sale? A. Yes, he did.

1330 Q. And what did he say at that time? A. He said early in the negotiations, perhaps in 1929, he represented the General Motors Corporation in Europe, in Germany; and that after the negotiations had begun, and he became more intimately acquainted with the von Opel family, that ultimately he had sort of a dual classification, both as a representative of General Motors Corporation and also of the Opel interests.

Q. And during the course of this interview did Mr. Stansfield refer to any statements concerning Swiss investments? A. Yes, he did.

Q. And will you please tell us of what you remember of those statements? A. Stansfield said that he and Wilhelm von Opel had spoken on a number of occasions concerning the chaotic economic and political conditions which

existed in Germany at that time; particularly were they chaotic for people of some substance or wealth.

And Stansfield said there was a little expression current at the time in Germany, which expression said something to the effect that gold or money was not everything, unless you had it invested in Switzerland.

I asked him whether or not Wilhelm von Opel ever used that expression in his presence, and he said yes, he 1331 had, that Wilhelm had said that to him on a number of occasions.

Q. By the way, Mr. Kiefer, I questioned you a moment ago about notes you took. Do you have those notes with you today? A. Yes, I have.

Q. During the course of your interview in June, 1947, did you have any conversations with Mr. Stansfield concerning Fritz von Opel's status as a Devisen Auslander?

A. Yes, I did.

Q. Would you please tell us what was said? A. Well, I questioned Mr. Stansfield concerning his knowledge of whether or not Wilhelm von Opel had suggested to Fritz von Opel that Fritz obtain an Auslander classification.

Stansfield said he had no knowledge at all whether Wilhelm had made such a suggestion to Fritz. He said, however, that on a number of occasions Wilhelm von Opel had mentioned that it was fortunate that Fritz was so classified as an Auslander, because nobody knew what was going to happen in Germany, and that perhaps through Fritz Wilhelm might be able to invest something outside of Germany, so that later, regardless of what would ultimately happen in Germany, he, Wilhelm, could be taken care of in his old age by his son.

Q. Now, during the course of your interview with 1332 Mr. Stansfield, did you question him concerning a gift agreement of October 5, 1931? A. Yes, I did.

Q. Did you question him with respect to the date of the agreement? A. Yes.

Q. Would you please tell us the conversations you had with Mr. Stansfield concerning that date? A. Yes. I

questioned him particularly with reference to whether or not the date of October 5, 1931, might have been affixed to the gift agreement at some time other than the time when the gift agreement was actually signed by the parties.

Stansfield exhausted to some extent that question of date, and Stansfield said that he had some very vague recollection concerning conversations which took place regarding that date. But he had no present recollection of what those conversations were, or how or in what way they concerned the case.

I questioned Stansfield whether or not he could positively state that the instrument was not pre-dated. And he said that he could not positively state yes or no whether the instrument was or was not pre-dated. He thought that the signatures were affixed at the same time as the date which appeared on the instrument, but he couldn't positively state one way or the other.

Q. So I gather your answer is that he couldn't say whether or not the agreement was pre-dated? A. That is right.

Q. Did he exclude the possibility that it was pre-dated? A. No, he did not exclude the possibility. He said he could definitely say that it was not pre-dated.

Mr. Baum: That is all.

Cross Examination

By Mr. Ingoldsby:

Q. Mr. Kiefer, how long have you been an agent with the bureau? A. A little over six and a half years.

Q. And did you know anything about this case when you went to see Mr. Stansfield on June 4 of 1947? A. I had the background of the case in general. Would you like me to explain how I had that background?

Q. Yes; who gave it to you? A. The Department of Justice sent a memorandum to my headquarters in Washington, the Federal Bureau of Investigation Headquarters, and they in turn sent either that memorandum or perhaps

an abstract of that memorandum to the New York office, giving in general the background of the case, what litigation had taken place to date, and a request that certain people be interviewed in connection with the case. On the basis of that memorandum, I made various inquiries.

Q. And who went with you on June 4, 1947, when you questioned Mr. Stansfield? A. The interview occurred in the New York office of the FBI. Mr. Stansfield came to our office, and Special Agent Walter C. Martinson was present at the time.

Q. Is he here today? A. No, he is not.

Q. Is he still with the bureau? A. Yes, he is; he is with the New York office.

Q. May I see the notes you made at that time? A. Yes, sure (handing them).

Q. Were these notes you have just handed me prepared while Mr. Stansfield was talking to you? A. Yes, they were.

Q. You heard Mr. Stansfield testify yesterday that you had not taken any notes? A. Yes, I did.

Q. And, as a result of this interview, you prepared a statement, you prepared a report to the bureau, did you not? A. Yes, I prepared a report to the bureau, not a statement.

Q. A customary agent's report? A. Yes.

1335 Q. Do you have a copy of that report with you?

A. No, I do not.

Q. When was the last time you saw it? A. Last night, in Mr. Bower's office.

Q. Who is Mr. Bower? A. I beg your pardon—in Mr. Baum's office.

Q. But you do not have it with you today? A. No, I do not.

Q. And had you taken that copy of the report to Mr. Baum's office, or did he have it? A. He had it. I assume it was transmitted in the normal course of affairs.

Q. And did you read a copy of your report before you came down here from New York? A. In New York, yes.

Q. And you are quite certain you took these notes during the course of the interview? A. Well, yes; I am absolutely certain.

Q. And did Mr. Martenson also take notes? A. No, he did not.

Q. Did he write a report? A. No, he did not.

Q. Do you know that five or six of your agents have also interviewed Mr. Stansfield? A. No, I am not aware of that.

Q. You did not know that? A. No.

Q. When you went out to interview him, didn't you know he had been interrogated by other agents? A. I knew he had been questioned concerning Mr. Fritz von Opel, concerning his internment. But I didn't know how many agents interviewed him, or when the interviews had taken place.

Q. And you didn't take the trouble to look through the FBI reports in New York to see whether or not Mr. Stansfield had given statements to other agents on this same topic, before you went to interview Mr. Stansfield? Is that correct? A. I looked through the index of the office concerning what the interviews were about. But I am not positive that I saw whether statements had been taken, or not.

Q. What do you mean by "statements taken"? A. I thought you mentioned that statements were taken. By "statements" I meant something in the form of a signed statement.

Q. You meant a signed statement by the person being interviewed? A. That is right.

Q. And did you say you looked through the files of the bureau on that? A. I looked into the files of the bureau.

1337 Q. And did you find any signed statements had been obtained? A. I don't recall whether I found

any signed statements or not. I have no recollection of finding any.

Q. Did you read the reports of the agents who had interviewed Mr. von Opel, before you went out to interview him? A. As I recall, I looked over the reports to determine whether or not they had any connection with this case. But, as I recall, they had no connection with this case, or the facts of this case.

Q. Are you quite sure you read those reports? A. Yes, I looked over whatever was in the index. I don't recall whether there were any exhaustive reports in the index at all. But I glanced over whatever we had available in New York at the time.

Q. Do you remember seeing anything in any of those reports about pre-dating? A. No, I do not.

Q. And it is standard bureau practice to obtain a signed statement wherever possible, isn't it? A. There is no hard and fast rule concerning it. Certainly in a case like this, I think if the person being interviewed is agreeable, I think it would be usual to obtain a signed statement.

1338 Q. Well, you can't get a signed statement from anybody unless they are agreeable, can you? A. No.

Q. And did you say it was not standard practice to get a signed statement from a witness, from one who is likely to become a witness? A. I didn't say it was not standard practice. I said there was no hard and fast rule concerning it, and I thought it would be very likely to obtain such a statement in a case like this.

Q. And when did you ask Mr. Stansfield to sign a statement? A. At the conclusion of the interview on June 4, 1947.

Q. And did he refuse? A. Yes, he did.

Q. And he wouldn't sign the statement at that time? A. No. I asked him whether he would be agreeable to signing a statement when such a statement was drawn up.

Q. And did you show Mr. Stansfield the notes you took during the interview? A. No, I did not.

Q. Did you at any time submit any notes to Mr. Stansfield? A. Well, it was perfectly obvious that I was taking notes. As a matter of fact on a number of occasions, 1339 as Stansfield testified yesterday, he pointed to the notes I was taking and said, "I want to talk to you off the record. Don't put it down."

And I explained to Mr. Stansfield that my job as a special agent is to obtain the facts, not to keep them off the record, and if he wanted to tell me what I wanted him to tell me, perfectly well and good, but I certainly intended to record everything about what he did say.

Q. And you told him that? A. Yes.

Q. And it was after that that you had this conversation about the pre-dating? A. Well, I don't recall whether it was after it or before it. On a number of occasions Stansfield said, "Now what I am going to say now, I want off the record."

And I explained to him that certainly I didn't intend to keep it off the record.

Q. You are acquainted with Mr. Stansfield's background, are you not? A. Just generally, yes.

Q. Generally you are acquainted with it? A. Yes.

Q. And it is your testimony that Mr. Stansfield was telling an FBI agent something about his conduct in this case which was off the record? A. No; no, not at

1340 all. I would like very much to clear that up. Mr. Stansfield said, "I would like what I am about to say off the record."

And I said to him very definitely that I would not take what he was going to tell me on an off-the-record basis; that if he wanted to tell me, he could, and if he didn't want to tell me, he didn't have to, naturally; but what he was going to say to me was going to be recorded by me, since that was my job.

I said, "It is entirely up to you." Whatever he said, he did at his own volition.

Q. Did you ever show Mr. Stansfield the report you prepared? A. No, of course not.

Q. And you only had this one conversation on June 4 about pre-dating? Is that correct? A. That is correct.

Q. And you didn't talk to him any more about that topic? A. No. That is correct.

Q. And then you went to see him again on August 9? Is that correct? A. Of 1948.

Q. And you didn't go to see him, you didn't talk to him at all about pre-dating at that time, did you? A. 1341 No; that is true.

Q. Did you say in your direct examination that you had discussed with Mr. Stansfield the advantages of becoming a Devisen Auslander? A. I had discussed with Mr. Stansfield the status of Fritz von Opel as an Auslander.

Q. And who told you what an Auslander was? A. Well, I think I knew pretty well what an Auslander was, before this case.

Q. What was it? A. From just general knowledge.

But certainly the question of Fritz von Opel's status as an Auslander was included in that preliminary memorandum I spoke to you about at the beginning of the cross examination.

Q. And what is a Devisen Auslander? A. Well, as far as I can recall, it would be a person who would have a dual classification. He would be a citizen of Germany and he might be a citizen of another country.

Q. That is your understanding of a Devisen Auslander? A. Yes.

Q. Mr. Kiefer, let me refresh your recollection. Isn't this what happened in that conversation?—

You did talk about the possibility of pre-dating this agreement, to Mr. Stansfield. You did do that, didn't you? A. Yes, I did, 1342

Q. And that was your primary reason in interviewing Mr. Stansfield, wasn't it? A. Oh, no. That was

certainly one of the primary reasons for interviewing him, but there were many things about which I had to question him, based upon the request of the Department of Justice.

Q. What were the other things you wanted to question him about? A. Well, to begin with, what his status was as far as an attorney is concerned; whom he represented at the negotiations, whether he represented the General Motors Corporation or whether he represented the Opel interests.

Q. On that phase of it right there, if I may interrupt you, yesterday—or I will put it this way:

At the time you had your interview with him in June, 1947, he told you the same thing about whom he represented as he told on the witness stand yesterday, didn't he? A. Yes, that is right.

Q. All right. What else did you talk to him about? A. And I spoke to him about whether or not—I wanted to speak to him about whether or not Wilhelm had used Fritz von Opel as a method of getting funds out of the country. I wanted to speak to him about—

Q. What did he tell you about that? A. It is going to take some time. He stated—that is where the conversation concerning Auslander came up—he said Wilhelm had never told him, Stansfield, that he was using Fritz to get securities or wealth out of Germany. He said that he did not know whether or not Wilhelm had ever instructed Fritz in that matter. He had no knowledge of that at all.

But he could say that during conversations with Wilhelm, Wilhelm had said on a number of occasions that it was a good thing, that it was fortunate that Fritz was outside of Germany; and that Wilhelm was extremely concerned over his old age, and who would take care of him during his old age; and that perhaps through Fritz he would be able to get something outside of Germany so that he could be taken care of in his old age by his son.

Q. Those are your own words?—"Got something outside of Germany"—are they not? A. No, they are not. They are as close—I beg your pardon. They are my own words. But they are as close a quote of what Stansfield said as I can recall at the present time.

Q. You heard that portion of Mr. Stansfield's testimony yesterday, did you not? Do you recall hearing him say that it was fortunate that Fritz was outside of Germany?

Do you recall hearing him say that yesterday? A. 1944 I don't recall hearing him say that, Mr. Ingoldsby.

Q. You don't recall him saying that? A. I do not recall hearing him say that.

Q. You were here all during Mr. Stansfield's testimony? A. I was here during his testimony.

Q. Are you a lawyer? A. No, I am not.

Q. And how long have you been in the New York office? A. Since March, 1946.

Q. And what type of cases do you work on generally? A. Generally fraud against the Government, bankruptcy, the Federal Bank Act—or the National Bank Act—anti-trust cases.

Q. Let me ask you this, and see if this refreshes your recollection:

Do you recall in your conversation of June 4 with Mr. Stansfield whether you asked him about the pre-dating, and he told you he didn't know exactly what the date was, but whatever the date was on the agreement, that is the date it was signed? A. No, that is not the case at all.

Q. You do not recall it that way? A. No, I do not recall it that way at all.

Mr. Ingoldsby: That is all.

Redirect Examination

By Mr. Baum:

Q. Mr. Ingoldsby just asked you, Mr. Kiefer, whether Mr. Stansfield has said he didn't remember the date of the agreement, and I believe you said that is not what he said? A. That is right.

Q. Did you have a copy of the agreement with you at the time of this interview? A. I had a copy of the English translation of the agreement.

Q. Which had been furnished you by whom? A. As I recall it, it had come up to the New York office attached to the Department memorandum.

Q. And did you show that copy of the English translation to Mr. Stansfield? A. Yes, I did.

Q. At the time you questioned him about the date? A. That is right; yes, I did.

Mr. Baum: Your Honor, inasmuch as cross examination has been based on these notes, I think I would like to offer them in evidence at this point.

Mr. Ingoldsby: We certainly object to that, Your Honor.

The Court: You object to it?

Mr. Ingoldsby: Yes, Your Honor.

The Court: Then they are not in evidence, if he objects.

1346 Mr. Ingoldsby: I haven't read them, but it is just a standard objection.

By Mr. Baum:

Q. Mr. Ingoldsby questioned you about a previous report of an interview with Mr. Stansfield, which I believe you said had something to do with the internment of Fritz von Opel. Is that correct? A. Yes, as I recall now, that is correct.

Q. Do you have any knowledge of why Mr. Fritz von Opel was interned?

Mr. Ingoldsby: I object, Your Honor.

The Court: Is that material?

Mr. Baum: I merely want to show, Your Honor, he knew nothing about this previous interrogation and had nothing to do with this case. The answer I expect to get is no.

The Court: Ask him the question as you said it just then, in that form.

By Mr. Baum:

Q. In the course of your duties as an agent of the Federal Bureau of Investigation, were you ever called upon to interrogate anyone in connection with the internment of Fritz von Opel? A. No, I was not.

Q. Did you see the report on the interview with Mr. Stansfield which related to the internment of Mr. 1347 von Opel? A. As I explained to Mr. Ingoldsby, it is normal practice to check the name of the person to be interviewed against the index of the field office, and to draw those files and look through them to determine whether or not there is any reason why this man should not be interviewed, something of that nature.

Now, I did that as usual practice in this case. But I cannot testify now as to whether or not I saw a particular report related to Fritz von Opel's internment, or not. I checked the name of Manfred Wrangler-Flatow Stansfield in our index and looked at everything in that connection.

Q. Do you recall whether there was anything in any prior reports concerning an interrogation of Mr. Stansfield on this gift agreement? A. I have no recollection of his ever having been interviewed concerning the gift agreement.

Q. You testified that you re-interviewed Mr. Stansfield in August, 1948. A. That is right.

Q. Was that in connection with this same case? A. Well, as far as I am concerned, it was not. It was an entirely new case.

Q. What makes you say that?

Mr. Ingoldsby: I object, Your Honor. This isn't proper redirect.

1348 The Court: If it was not on the subject of this case, it would not be material.

Mr. Baum: Your Honor, I think counsel has attempted to show he went back and re-interviewed Mr. Stansfield and that nothing was then said about pre-dating. The fact is that there was an entirely different subject matter involved, and therefore there was a reason for it.

The Court: That is what he said.

Mr. Baum: All right, sir. No further questions.

Mr. Ingoldsby: No questions.

The Court: All right; you are excused.

(Witness excused.)

The Court: Now we have all of our hurried witnesses disposed of, don't we?

Mr. Gallagher: I believe so, Your Honor.

The Court: Let us finish up with Mr. von Opel, then.

Mr. Burling: At this time, if Your Honor please, Your Honor will recall the testimony when Mr. von Opel was last on the stand, on Friday, that Uebersee invested approximately \$45,000 in Transdanubia bauxite.

The testimony also was that Mr. von Opel told the Miami hearing board, in the spring of 1942, that he had invested some \$15,000 in Transdanubia bauxite.

He explained the discrepancy in terms of a deflation of the pengo or Hungarian unit of money.

1349 I therefore ask that the Court take judicial notice—and I am reading from the World Almanac for

1947—that the pengo in 1937 was at the rate of 19.779 cents;

That it went in 1938 to 19.727;

That in 1939 it was 19.238;

In 1940 it fell to 18.475;

In 1941 it went back up to 19.770.

Then I ask Your Honor to take judicial notice of the New International Year Book for 1943, and I am reading from page 309, under a section called "Finance"—

"The official exchange rate of the pengo in 1942 was \$0.1949."

Mr. Gallagher: Your Honor, I object to the Court's taking judicial notice on the basis of this almanac Mr. Burling is reading from, because it doesn't set forth therein, from the statement he has just made, whether these were free pengos or blocked pengos.

I understand from our Swiss expert, Dr. Kaufmann here, there is quite a differentiation in the market; that a free pengo has a much higher rate of exchange against the dollar, whereas the blocked pengo had a very much lower rate of exchange. And Mr. von Opel was dealing with the pengos in Hungary at the time these loans were made in 1938.

Mr. Burling: If Your Honor please, there might be arguments which could be advanced, but there is no doubt that the Federal Reserve Board reported the pengo at this rate. I don't believe my friend will contest that this document says it; and I think unless there is some showing that it is not the official Federal Reserve Board rate, the judicial notice should be taken of what the official rate is.

I don't deny his right to argue there might have been foreign exchange controls in Hungary. But the official rate was, at all relevant years except 1940, when it was 18, the official rate was nineteen point something cents.

Mr. Gallagher: Would you stipulate, Mr. Burling, that you are speaking of free pengos when you are making those quotes?

Mr. Burling: I am speaking of what the official exchange rate was. I don't know as to the foreign exchange.

Mr. Gallagher: We stand on our objection, Your Honor, unless the distinction is drawn between free pengos and blocked pengos.

The Court: You had better give me what information all of you have on the subject, and I will decide at the end of the case whether I can judicially notice. I understand when you come to judicially notice a matter, you can have recourse to documents and testimony of those who have knowledge.

Mr. Burling: I believe, if Your Honor please, ordinarily when commonly used texts on matters of public knowledge which are beyond dispute, as to what the Federal Reserve Board said the exchange rate was, are presented.

The Court: Well, I suppose if the Federal Reserve Board documents say it, I can get it from that.

Mr. Burling: I will bring in the original document, rather than an almanac.

The Court: I don't rule that is not competent. I say at the end of the case I will go on what you have.

I don't think that is a valid objection, Mr. Gallagher. I think the point is that when a Judge has called to his attention matters of standard or historical note or tables of exchange and things of that sort, he may look at any number of sources, it may be, and decide at the end what he finds to be the established fact that he can notice.

And I don't think it is confined to any one particular proposition. It may be that you have one almanac, and maybe you can get another. I don't know. Maybe they are all the same. Maybe there isn't a distinction such as you are talking about. Maybe there is; I don't know.

Mr. Gallagher: That is the reason I wanted to bring Your Honor's attention at this time to a distinction be-

tween the blocked pengo and the free pengo, since Mr. Burling is making quite a point of the fact that he said it was fifteen thousand instead of forty-five thousand.

The Court: I will look at these authorities, and such others as you want to present.

1352 Mr. Gallagher: Thank you.

Whereupon, FRITZ VON OPEL returned to the stand and was examined and testified further as follows:

Cross Examination (Resumed)

By Mr. Burling:

Q. In 1938 and 1939 you yourself participated in technical activities relating to the production of bauxite, did you not? A. In what?

Q. Technical, engineering activities relating to bauxite production.

Mr. Gallagher: What year was that, Mr. Burling, please?

Mr. Burling: 1938 and 1939.

The Witness: I didn't do too much. I had several experts doing it.

By Mr. Burling:

Q. What were the names of your experts who were doing it? A. There was Mr. von Krausz.

Q. K-r-a-u-s-z? A.. K-r-a-u-s-z.

Q. s-s or s-z? A. s-z, in Hungary.

1353 Q. By the way, have you known him for a long time? A. Yes, I think I knew him since 1935. I met him in connection with this matter.

Q. I see. He was a mining engineer in Hungary? A. He was an engineer, and a geographer.

Q. A geographer? A. Yes, and versed in those matters of mapping out areas.

Q. And what position did he hold in Transdanubia Bauxit? A. He was one of the managers. The other manager was a man by the name of Dr. Timar.

Q. T-i-m-a-r? A. Yes, right.

Q. Was there a man named Somogyi?—S-o-m-o-g-y-i? A. I think he was a mining engineer.

Q. Employed by or an official of Transdanubia? Is that right? A. That is possible, for the time being; he wasn't continuously employed.

Q. Who was a man named Saluschinsky? A. Saluschinsky was a lawyer. Gyuia was his first name.

Q. What was his first name? A. G-y-u-i-a.

1354 Q. Didn't you yourself carry on discussions of a technical or engineering nature with respect to the production of bauxite in the years 1938 and 1939? A. I discussed the general problems with Mr. von Krausz. It isn't a very complicated procedure. You just dig a hole in the ground and get this mineral out. It isn't very complicated.

Q. You prospect for bauxite, do you not, by drilling small holes? A. Yes, that is done.

Q. It is similar to the process of drilling oil wells, is it not, mechanically? A. Yes. We did that by hand, with a very cheap drill rig, turned by hand; two or three workmen were turning it. And we only drilled to a depth of about, I think the maximum was about 25 meters. That is, let us say, about 80 or 90 feet.

Q. And you discussed this cheap hand labor drilling with Mr. Crittenden in his home in Nashville in 1938, did you not?

Oh, I am sorry. I have the city wrong. It is Shreveport. A. I explained to him, yes, that it was some old-fashioned drilling we did there, and it was not up to date.

Q. And did you not discuss with him the question
1355 of whether modern American oil well drilling apparatus might be brought from America and used for prospecting for bauxite? A. He suggested it. But the equipment was much too expensive. And oil drilling goes to much greater depths, than this shallow drilling for the minerals, you see.

Q. And you did go with him in Shreveport to inspect some drill rigs, did you not? A. Yes, I think we visited a place where they had some drill rigs for sale, very light ones. But even these were too heavy for this kind of work.

Q. So it did not seem to you feasible to import American drilling apparatus to carry on the Hungarian operation? A. I think it was too expensive.

Q. And is it not the fact that in the spring of 1938, in Shreveport, you asked or suggested to Crittenden that he come to Hungary in the summer of 1938 and inspect your operation? A. I rather doubt that, as he was much too busy in the refineries.

Q. Yes. A. And there was very little he could learn from an engineering standpoint.

Q. And is the man Somogyi to whom you referred, the man to whom you also referred in your letter which
1356 is Defendant's Exhibit 80, dated September 11, 1939?

Do you see the name Somogyi? A. Yes. It says here that the mining authorities, the Hungarian mining authorities, wanted Dr. Somogyi.

Q. I see. This Somogyi is the same Somogyi is the man to whom you previous referred? A. You referred to him.

Q. Did you not identify him as an official or an employee of Transdanubia? A. I think he was for a very short while, upon the insistence of the Hungarian mining authorities. You see, in Hungary there is a regulation, if you mine, you have to have an official mining engineer, a classified mining engineer, classified by the Government, as supervisor of operations.

Q. The name of the corporation, Transdanubia, was Transdanubia Bauxit A. G., or "ah gay"? Is that right?

A. Yes, sir.

Q. And that A. G. stands for the German word for corporation, does it not? A. It means stock corporation, yes.

Q. My point is, it is a German word. A. No. You see the letterhead, you see the Hungarian name, and underneath the German name.

Q. But the Hungarian equivalent of A. G. is R. T., 1357 isn't it? A. I think so, yes.

Q. And the office of Transdanubia Bauxit was located at "V Bathory-utca 5", in Budapest? Is that right? A. I think that was, if I remember correctly, the home of von Krausz, or it was the address of Dr. Saluschinsky—one of the two.

Q. I show you what looks on its face to be a letterhead of Transdanubia Bauxit, and invite your attention to the address and ask you if that refreshes your recollection as to the address of Transdanubia Bauxit. A. I think that is either the address of Dr. Saluschinsky's office. Dr. Timar, the manager, was an associate—it was a firm of lawyers—Dr. Timar was the associate of Dr. Saluschinsky, and after the death of Dr. Saluschinsky, he took over, the law firm; he is a lawyer.

Q. At any rate, I am not asking you about the letter, but the letterhead. That is the letterhead of Transdanubia Bauxit? A. I think so, yes.

Mr. Burling: I now wish to offer in evidence a document merely to show the letterhead, and I do not offer in evidence at this time any part of the body of the document. (To Mr. Gallagher:) Do you wish to look at the letterhead (handing the letter)?

1358 Mr. Gallagher: That is all right. We have no objection to the letterhead.

(Accordingly, the letterhead portion of the paper identified as Defendant's Exhibit 90 was received in evidence.)

By Mr. Burling:

Q. So you do recognize Defendant's Exhibit 90 to be the letterhead of Transdanubia Bauxit? A. I think so, yes.

Q. Thank you. A. That was the custom in Hungary, because very few people spoke Hungarian.

Q. And that is why, is it not, that the name of the corporation is set out both in Hungarian and in German?

A. Yes; that is where the two languages are used in Hungary.

Q. Now, going back to your testimony of last Friday, I believe that you stated you had sent the wire which is Defendant's 82. Did you not state that?

Did you not state that? A. State what?

Q. That you sent this wire. A. Yes, certainly.

Mr. Burling: I believe it can be stipulated by the parties that Defendant's 82 is a wire sent between September 16 and September 19, 1939, Your Honor.

1359 Mr. Gallagher: That is right.

By Mr. Burling:

Q. Defendant's 81-A was a letter to you from Giulini Brothers, dated September 16. A. That is not the letter the cable refers to.

Q. It is not? A. No.

Q. To what letter, in your opinion, does the— A. May I see the wire again?

Q. Yes. A. It is stated in the wire.

Q. The wire refers to Giulini's letter of September 16. A. Oh, yes; you are right, yes. That is a letter I rejected and I say I stick to my proposal of July 31.

Q. Yes. A. That is correct.

Q. In other words, Defendant's 81 is Giuliani's letter to you. A. Yes.

Q. Defendant's 82 is your telegraphic reply to Giuliani? A. Yes, in which I state—

Q. I am just trying to get this clear. A. In which I state—

Q. Thank you, Mr. von Opel. A. Yes.

1360 Q. Now, Giuliani, in their letter to you, request you do that, to tackle with all your energy the resumption of production in the mines? A. Correct—and that is what I refused.

Q. Will you please do not volunteer.

If that is what they ask you, the answer is yes, and nothing more. A. Yes.

Q. And you replied—

"Your letter 16th September as before stand by my offer July 31 upon receipt of order immediately ready to travel Budapest for purpose of starting production." A. Yes.

Q. Didn't you? A. Yes, that is correct.

Q. And your offer of July 31 was an offer to produce bauxite, was it not? A. Under certain conditions.

Q. At any rate you, shortly after September 16, 1939, indicated that you were ready to go to Budapest for the purpose of starting bauxite production, didn't you? A. Under the conditions that Mr. Koranyi would be—

Q. I don't care what the conditions were. If Mr. Gallagher wishes to ask you, he can.

You did say after September 16, you were ready
1361. to go to Budapest— A. Yes.

Q. —to produce bauxite? A. Yes.

Q. Thank you. By the way, when did Hungary join the Axis pact? A. I couldn't tell you that.

Q. It was before this date, at any rate, wasn't it? A. I don't think so, because if I remember correctly, in 1938 they were very close with Italy, and Germany was afraid

at this time that Italy jointly with Hungary would stop the conquest of Austria.

Mr. Gallagher: If Your Honor please, in order to try to speed things up, we have gone along with Mr. Burling on all this 1938 and 1939 situation, which we agree happened, that would be considered in the production of bauxite and so on. But we can't see where it has any materiality in this matter at all.

Mr. Burling: I would be glad to make a statement of what my theory is.

Mr. Gallagher: I wish you would.

Mr. Burling: The fact is, as we shall establish by the text, that Hungary at this time was a member of the Axis.

We shall further establish that Mr. von Opel well knew that the bauxite, which was being produced in Hungary was going to the Giulini, one of the principal fabricators of aluminum in Germany;

That he well knew that aluminum in Germany was then going to the Luftwaffe, the German Air Force.

We shall show that he continued his activities personally in the producing of bauxite, until just before he left, until three or four days before he left Europe.

We shall show at that time he had negotiated, himself, a contract to have Transdanubia continue to producing bauxite in ever increasing—well, in annually increasing amounts.

We shall show that Transdanubia did continue producing bauxite all during the war, which bauxite was going into the German war economy and the German Air Force.

And we shall show that it was the intention of Fritz von Opel that this happen.

Then at that point we will argue that since we show Uebersee and Fritz von Opel actively setting up the production of bauxite, through Uebersee's wholly owned sub-

sidiary, Transdanubia, that the burden is then upon the plaintiff to show that after December 6 that condition in some way stopped.

We concede that Fritz von Opel personally was not engaged in those activities, because he was in internment here during most of the war. But the question is not whether Fritz von Opel personally engaged in these activities. The question is whether Uebersee is an enemy, because it was doing business in an enemy country, 1363 enemy occupied territory.

Hungary, of course, was an enemy country. The production of bauxite is of course doing business. And we think that since we can show, we believe, that Transdanubia itself did produce bauxite; that Fritz von Opel contracted that it would produce bauxite during a term which lasted well into the war; when we show all of his activities before the war, before America entered the war, but after the European war was being waged, to cause bauxite to be produced to go to Germany, that the burden is on Uebersee Finanz-Korporation to show that pattern of doing business in Hungary ceased on December 6.

Mr. Gallagher: Now, Your Honor, we will positively show the Court that there was no business done by Uebersee or by Mr. von Opel, subsequent to May, 1941. We categorically state we will convince the Court of that fact.

But, for the moment, all this camouflage Mr. Barling has thrown into the case, with letters from the Giulinis, they are not letters Mr. von Opel wrote, but letters the Giulinis wrote to him in 1938 and 1939—and the war between Germany and England had broken out.

But the camouflage they throw around this case, because von Opel, in Switzerland, and a citizen of Liechtenstein, and a neutral corporation, was still engaged in mining bauxite—and very little came out, a few thousand

tons. But, regardless of what came out, they had
 1364 the right to sell to England, like we were doing
 in this country, or to Germany, or elsewhere. It
 is only a camouflage, the whole thing. And we say, if
 this is going to continue, with documents, as to what
 transpired in 1939 and 1940, it is completely irrelevant.

The Court: The continuity may be important. I will
 permit it to be proved, and we will argue it at the end,
 when we will argue both sides.

Mr. Burling: Thank you, Your Honor.

I ask Your Honor, in the absence of some counter show-
 ing by my friends, to take judicial notice of what is set
 forth on page 474 of the World Almanac for 1947, as
 follows:

"Hungary joined (February 24, 1939) the Anti-Com-
 mintern Pact, and signed (November 20, 1940) the Ger-
 man-Italian-Japanese Axis Pact.

"Hungary declared war on Russia June 27, 1941; on
 the United States and Great Britain, December 13, 1941."

Mr. Gallagher: We have no objection to Your Honor's
 taking judicial notice of the date that war was declared
 between Hungary and the United States. But when they
 joined the Axis Pact and all, we say, is completely ir-
 relevant in this proceeding.

The Court: Let it go into the record, and I will hear
 your arguments on it at the end.

1365 Mr. Burling: I ask that a document, together
 with its translation, be marked Defendant's Exhibit
 91 for identification.

(The documents referred to were marked for identifica-
 tion Defendant's Exhibits 91 and 91-A.)

By Mr. Burling:

Q. Now, Mr. von Opel, I show you a document of which
 Defendant's 91 is a photostat, and ask you if that is not
 the reply to your telegram which is Defendant's 90.

Mr. Gallagher: Your Honor, without repeating it any further at this time, do I understand the record should show that we have an objection to all this testimony with respect to 1939 and 1940, the years preceding the war?

The Court: Yes, you may have that understanding.

Mr. Gallagher: Thank you.

By Mr. Burling:

Q. You did receive this letter from Giulini, did you not?
A. Yes, I think so.

Q. And that refers, again, to your leaving Zurich for Budapest, does it not? A. No; it only quotes my wire.

Q. And on October 4 Giulini again wrote you, confirming their earlier letter of the 19th, did they not?

Mr. Gallagher: What is the year, please?

1366 Mr. Burling: October 4, 1939.

By Mr. Burling:

Q. You recall receiving this letter, do you not? A. It is possible, yes.

Mr. Burling: I offer Defendant's Exhibit 92, which is a photostat of the letter which the witness has just examined.

1367 Q. You replied on October 28, 1939, did you not?

I am showing you a document of which Defendant's Exhibit 93 is a photostat. A. Yes.

Q. And you say to Frick—and Frick, you said, was an official of Giulini, did you not? A. Yes, I think so.

Q. He was the head of the purchasing department, was he not? A. Yes.

Q. "Dear Mr. Frick: Since my trip to the United States is impossible at the present time, I intend to go to Hungary instead. I would be grateful to you, therefore, if

you would let me know what result the conference of your firm with the other two refineries has had. I intend to stay for several weeks in Hungary, beginning November 10, and would be pleased if on this occasion we could meet in Budapest. I remain, Sincerely yours, Fritz von Opel."

Did you intend to go to Hungary? A. I was invited by some friends to come to Hungary.

Q. For what purpose? A. For hunting.

Q. You were well enough to go to Hungary for hunting in November, 1939, but your broken leg prevented 1368 you from going to Liechtenstein the same month for the purpose of taking the oath of allegiance in the meantime? A. Because I had an accident in the meantime.

Q. What was the nature of that accident? A. I had slipped and the leg was rather soft yet, so I hurt it again.

Mr. Burling: I offer Defendant's 94 in evidence.

By Mr. Burling:

Q. I will ask you now to look at a document of which Defendant's Exhibit 94 is a photostat, and state whether or not that is a reply from Gialini from your letter of October 28, which bears the date of November 4, 1939.

A. Yes.

Q. And this letter reads in part, does it not:

"It is therefore a fortunate coincidence because of your postponement of your trip to the United States you now intend to stay for several weeks in Hungary in order to be able to observe the development of the matter on the spot."

A. Yes; on the first, as you see by the heading, "Istvan Koronyi, Budapest," namely, "To the lawsuit in which we all were involved."

Q. It also refers, does it not, to the production of bauxite? A. Yes.

Q. When was this second accident to your leg, 1369 please? A. I think that happened after my return to Switzerland.

Q. After you returned to Switzerland from where? A. From Hungary.

Q. In other words, in the month of November, 1939, you did make a trip from Switzerland to Budapest? A. Yes.

Q. And that was for the purpose of speeding up production in your bauxite mine, was it not? A. I wouldn't say that.

Q. You did say that on November 10, 1939, did you not? A. No speeding up happened, Mr. Burling.

Q. I know, but the reason that you went from Switzerland to Hungary was to speed up production in your bauxite mine, was it not? A. The main purpose was to get this Koronyi matter settled, who was sitting on my neck since five years continuously defrauding me, and I had to pay all the public fees and wages and all other public charges.

Q. I show you a letter dated November 10, 1939, addressed to Walter E. Guyette of the Harvard Brewing Company, and ask you if you signed it. A. May I read the letter?

Q. Yes. (Pause) Have you read the letter? A. Yes.

Q. Did you sign it? A. Yes.

1370 Q. Did you not tell Mr. Guyette on November 10, 1939, "I am now on the way to Hungary to speed up production in my bauxite mine, but I hope to be home in St. Moritz for Christmas"? A. Yes.

Q. Will you state whether or not it was not a fact that the purpose of your trip to Hungary was to speed up production in your bauxite mine? A. Yes, I thought it was possible to settle this Koronyi matter and start delivering bauxite to Switzerland.

Q. Delivering bauxite to Switzerland? A. Yes.

Q. You contracted to deliver bauxite to Germany on this occasion, did you not? A. I don't think that any large quantity was ever delivered, Mr. Burling.

Q. We will get through much faster if you will answer my questions. Did you not go to Hungary and enter in a contract to deliver bauxite to Germany? A. If you refresh my recollection.

Q. I will try to do that. Will you look at Defendant's Exhibit 96 and state whether that is not a letter dated 13 April 1940, which you wrote to Edgar Giulini in Ludwigshaven? A. Yes, I wrote this letter.

1371 Q. Will you look at the first sentence of the second paragraph. It reads, does it not: "Although our agreement clearly provides that we will pay these overdue fees, one half share each, I thought it nevertheless correct to advise you of the matter and to obtain your consent to the payment." What agreement were you referring to? A. I don't recollect that. If you show me the agreement.

Q. I will show you the agreement. I show you a letter dated March 10, 1940, addressed to Giulini, and signed Krausz and Timar, and ask you if that is not an agreement which you negotiated with Giulini brothers in Budapest. A. Yes, it is an agreement.

Q. And you negotiated in Budapest, did you not? A. An agreement, I should say, with a loophole.

Q. Whether or not it has a loophole, you negotiated it in Budapest? A. Yes.

Q. When did you do that? A. That must have been in the fall of '39.

Q. You recognize the signatures of Krausz and Timar, do you not? A. Yes, I do.

Q. And they appear on the third page of this document? A. Yes.

1372 Q. Written right under the stamp "Transdanubia Bauxite," and the Hungarian word for incorporated, is that correct? A. I don't know whether that is the word. I presume so. I don't speak Hungarian.

Q. This agreement provides, does it not, that Transdanubia undertakes to ship to Giulini at Ludwigshafen 100,000 tons of bauxite at a basic price of 10 R. M. f.o.b. car, and then at Suemeg, or Zalabalep stations. Those stations were where the mines were, is that right? A. Oh, no, they are stations on the River Danube.

Q. And then there is some more Hungarian geographical terminology:

"Shipment to be made from the 'Margot I-IV' and 'Edgar' mines, one-half of which is owned by you, one half by Mr. Lucovnik, engineer, and subject to the following conditions."

Then there is a paragraph on quality, a paragraph on discount, a paragraph on price, a paragraph on payment, and then the following:

"Shipments: Shipment of the 100,000 tons of bauxite shall be started in the spring of 1940 as soon as weather conditions permit. You undertake, to deliver not less than 25,000 tons during the year 1940, another 35,000 tons during the year 1941, and the balance during the year 1942."

That would be 40,000 tons of bauxite in 1942, 1373 would it not? A. You just read it. Would you also read the next paragraph.

Q. I would be glad to go on reading:

"The obligation to make shipments terminates if bauxite of the agreed quality shall no longer be available in the mentioned mines in quantities which make mining commercially feasible, and if future shipments from other mines shall not be possible."

Do you want me to go on? A. No, that is sufficient.

Q. Did you negotiate such an agreement in 1939 with Giulini, or Giulini's representatives? A. I think Timar and Krausz made all those stipulations.

Q. I want to invite your attention to the first sentence of this document:

"On the basis of negotiations conducted by your Mr. Fritz von Opel, on the one hand, and by our attorney-in-fact, Dr. Georg Ballay, attorney at law in Budapest, we confirm the fact that we concluded with you the following supply contract."

Does that refresh your recollection that you negotiated this? A. Yes, together with those men, because those technical details and prices, and so on, I did not know, 1374 but I certainly was present.

Mr. Burling: If Your Honor please, I apparently omitted to offer certain documents. I now offer Defendant's 90 through 97, inclusive.

Mr. Gallagher: Our objections are the same as to all this line.

(Accordingly, the documents above referred to were marked Defendant's Exhibits 90 through 97, inclusive, and received in evidence.)

Mr. Gallagher: Your Honor, I wonder if we could have a five-minute recess.

The Court: We will take a five-minute recess.

(Accordingly, a short recess was taken.)

By Mr. Burling:

Q. Will you look again at Defendant's Exhibit 96, which is the letter of April 13, 1940, from you to Giulini. This letter concludes, does it not: "If I can render you any service in the United States in business or private matters, I shall of course be glad to do so." A. Yes, that is correct.

Q. Did you ever render Edgar Giuliani any service in the United States? A. No, neither private nor in a business way.

Q. You state, do you not—and I am reading from the last sentence of the first paragraph on page 2 of the 1375 English translation—"Of course, I share your opinion that, within a few weeks, the entire dealings will run smoothly so that, in the long run, both of us, as I hope, will derive pleasure from our business association." A. Yes, that is correct.

Q. And then you go on to say, do you not: "On April 16 I am leaving on the Conte de Savoia for the United States where you can reach me, if necessary, at the address set forth below." A. Yes, that is correct.

Q. And then you set forth the address of your accountant, Bayer and Clauson. A. Yes.

Q. You meant by that letter, did you not, that at the time you were leaving for America you expected your bauxite problems to straighten themselves out so that thereafter you and Giuliani would have a pleasant business association. A. Yes, that is expressed in the letter.

Q. And that is what you meant to say, is it not? A. You always have to take those remarks with a grain of salt.

Q. But is it not the fact that just before you left for America you expected Transdanubia to start functioning smoothly? A. No, I was not willing to put any 1376 money into it. I thought within a very short time they would come to a stoppage.

Q. You thought that Transdanubia would come to a stop, and at the same time you wrote to Giuliani, "Of course I share your opinion that within a few weeks the entire dealings will run smoothly so that in the long run both of us, as I hope, will derive pleasure from our business association"? A. You must refer to this remark in the contract. There is what I call the loophole in this contract.

I already knew at this time that it was rather doubtful whether we ever would make big deliveries.

Q. What was the purpose, then, of entering into the contract to deliver a hundred thousand tons of bauxite, and writing this letter to Edgar Giuliani? A. Because I wanted to get Mr. Koronyi off my neck.

Q. That is why you contracted to deliver a hundred thousand tons of bauxite? A. Under certain conditions.

Q. Koronyi was already off your neck at the time you wrote this letter, was he not? A. The situation was rather unclear, because Giuliani had failed to really put Koronyi out of circulation. He still had some say in the matter.

Q. Hadn't he gone bankrupt in 1939? A. He was in difficulties, but Giuliani failed to really finish the man.

1377 Q. Didn't Koronyi go bankrupt in '39? A. I think he personally went bankrupt, but these 50 per cent were not kept on his name but on the name, I think, of a relative of his. And this part, I think, that was the reason that Giuliani could not get hold of him.

Q. Is it not true that on November 4, 1939, Giuliani had written you as follows: "A substantial change in the situation, however, has occurred as a result of the bankruptcy of Koronyi, which we assume is now under you." I am reading from Defendant's Exhibit 94. A. That is what I thought at the time, but I think those 50 per cent mining rights were not on Koronyi's name, that was the reason the Giuliani couldn't get repaid.

Q. Prior to April 13, 1946, you had frequent occasion to receive letters from Edgar Giuliani, did you not? A. Yes.

Q. And you also received letters from Mr. Frick, did you not? A. Yes with always under the heading Koronyi.

Q. Wait a minute. Did you not receive letters from Frick of Giuliani Brothers? A. Yes.

Q. I did not ask you a thing about the heading, did I?

A. No, I just wanted to refresh my recollection whether you were talking about those letters.

1378. Q. I am talking about letters which you received signed Edgar Giulini, or signed Frick. A. Which letters, what date?

Q. Did you not receive such letters? A. I received several letters.

Q. That is what I wanted to know, thank you. And you recognized the signature of Frick and Giulini, do you not?

A. Yes, I think so.

Q. Now, Mr. von Opel, I show you a document entitled "Aide Memoire," which is Government's Exhibit 98, and ask you if you do not recognize the signatures of the four men who signed that document. The first signature is that of Edgar Giulini, is it not? A. I don't recognize it, but it is possible.

Q. And the second signature is that of Heinrich Frick, is it not? A. That is possible.

Q. At any rate, you recognize the signature of Georg von Krausz, do you not? A. Yes.

Q. And von Krausz had what position with Transdanubia? A. He was one of the managers jointly with Dr. Timar.

Q. Will you examine this document and see if it is not an aide memoire, or record of a conference held in the office of an attorney in which the parties were Trans-
1379 danubia and Giulini? A. Yes, that is correct.

Q. And it records an agreement entered into, does it not? A. Yes.

Q. Between Giulini and Transdanubia? A. Yes, apparently.

Mr. Burling: I offer it in evidence.

Mr. Gallagher: Same objection that runs to all of these.

(Accordingly, the document above referred to was marked Defendant's Exhibit 98 and received in evidence.)

The Witness: This contract runs for three months.

By Mr. Burling:

Q. Did I ask you that? A. No.

Q. Haven't I asked you fifty times not to volunteer? A. Pardon me.

Q. You have lawyers, have you not, in this courtroom?

A. Yes.

Q. And you know they will have a chance to ask you questions after I finish. A. I beg your pardon.

Q. I show you Defendant's Exhibit 90-A, which you have previously identified as being the letterhead of Transdanubia; state, if you will, whether the signature on 1380 the right hand—there are two signatures—the right hand signature is not that of Dr. Timar. A. Yes, I guess it is.

Q. And that is written under the stamp, Transdanubia Bauxit, Aktiengesellschaft, is that right? A. Yes.

Mr. Burling: I offer it in evidence. If Your Honor please, this is dated February 4, 1942, and refers to shipments of bauxite to Giulini Brothers from Transdanubia

Mr. Gallagher: Are you offering it?

Mr. Burling: Yes. I said I offer it in evidence.

Mr. Gallagher: Your Honor, we object very strenuously to this unless Mr. Burling can tie it in in some wise with Uebersee or Mr. von Opel. As the proof further will show, in our case neither Uebersee nor this witness, Mr. von Opel, had anything further to do with Transdanubia, as far as directing its operations or otherwise. As we will further prove to the best of the belief of this witness and of the corporation the mines had been leased in '41.

This exhibit, which Mr. Burling is now offering, purports to relate what was being done by Transdanubia with Giulini subsequent to that time. We feel convinced that

it is completely irrelevant, and further that it is really incompetent to point the situation up. It would be similar to one in which an American corporation, or corporation of another neutral, having a subsidiary in a country which became an enemy or ally of enemy, that the subsidiary acting on itself without directions from the parent company, or the subsidiary having leased its properties to a third party, and they being operated by a third party, in no wise goes to show that the parent corporation, or the holding company, or Mr. von Opel in any wise directed, aided, assisted, conducted or operated mines in the production of bauxite, and until Mr. Burling can tie this exhibit, Defendant's 90, into Uebersee or Mr. von Opel, then we feel that it is clearly objectionable.

The Court: I understood, and over your objection I have been admitting all of this testimony with regard to this transaction subject to its being connected up at least to the extent that it may give rise to a presumption of continuendo. Now, if it does not, you can move to strike it out at the end of the case, and you can argue that as part of your argument, I have to take these things provisionally, subject to their significance being shown at a later time.

(Accordingly, Defendant's Exhibit 90, having previously been received in evidence for a limited purpose heretofore specified, was received in evidence in its entirety.)

By Mr. Burling:

Q. In any event, this document, 90-A, is signed by one of the managers of Transdanubia? A. Yes, that is signed by Dr. Timar.

1382 Q. Have you any reason to believe, Mr. von Opel, that at any time prior to V-E day Uebersee sold or otherwise divested itself of its ownership of Transdanubia?

A. Yes, sir, I have.

Q. What is that reason? A. I got lengthy report about the situation in Hungary in a letter dated March, '41.

Q. And that said what? A. I am coming to it. In addition to this letter I got numerous communi—

Q. I ask you what that letter said, please.

Mr. Gallagher: We have the letter, do you want to offer it?

Mr. Burling: No, I don't want to offer it. I want to see it.

Mr. Gallagher: You will see it at the proper time.

Mr. Burling: I now want to know from Mr. von Opel what the contents of the letter were, if you refuse to give it to me.

The Witness: You want to know the contents of the letter?

By Mr. Burling:

Q. Yes. A. The managers begged me to invest capital in the mine because they had run completely out of money.

They had produced very little because the surface 1383 production was exhausted, and they suggested, and implored me to invest about 50,000 pengos so the deep mining could be started. I refused, and even previously, prior to this letter, and they told me in this letter that it would be deplorable if I would give up the corporation, and they implored me for the favor of the corporation, and they implored me for the favor of the corporation so that the mine could be opened.

Q. Yes. A. I refused that, and I wired both managers of the corporation that I would not invest any money, and they should get rid of the entire investment either by selling it or by leasing it in any way they saw fit.

Q. Yes? A. That is about all.

Q. This was a communication addressed to Transdanubia, is that right? A. Yes, sir.

Q. My question, which I don't believe you answered—
A. Pardon me, it was, that the gist of the letter Transdanubia wrote me, and it also shows my prior orders to them, and after I received the letter I immediately got in contact with them by wire.

Q. With whom by wire? A. With Transdanubia.

Q. But my question was, which you did not answer: Have you any basis for belief that Uebersee Finanz-Korporation, prior to 1945, prior to V-E Day, ever divested itself of its hundred per cent ownership of the shares of Transdanubia.

Mr. Gallagher: Your Honor, we submit that that has nothing to do with the situation—no, even if the question were that they retained their ownership, it would not constitute doing business to own stock, a hundred per cent owned in a subsidiary. I want to clarify that point at this time.

Mr. Burling: Your Honor, is that not a point for argument, after we know what we are fighting about?

Mr. Gallagher: I want to clarify the point at this time before we continue.

The Court: I have gotten your point. I will hear you on the matter.

By Mr. Burling:

Q. You know that Uebersee did by a series of transactions continue to extend a guarantee to Transdanubia through the year 1942, do you not? A. There was a guarantee given of altogether seven or eight thousand dollars.

Q. And that was extended in the year 1942 by Transdanubia, was it not? A. No, it was not extended. Transdanubia had received a loan from a Swiss bank through a Budapest bank.

Q. And the Swiss bank was guaranteed by Uebersee through Adler, is that not right? A. Definitely.

Q. And is it not right that that arrangement was continued, that Henggeler took steps on behalf of Uebersee in the calendar year 1942 to continue that arrangement? A. You entirely—

Q. Is it true or not? A. No, not in the way you say it. It was different. We had—

Q. Haven't you previously testified, Mr. von Opel, to the effect that that guarantee was extended in 1942?

Mr. Gallagher: If it will serve any useful purpose, Mr. Burling, we are willing to stipulate that during the period of '41 and '42, until the collateral was returned by a Swiss bank which it had been posted with, which in turn serves as a guarantee to a Swiss branch in Hungary, who in turn gave a guarantee to a Hungarian bank, who in turn made a loan to Transdanubia bank in '40, we will stipulate that when the bank advised Uebersee, and in three-month periods during '41 and '42 until the collateral was released, that Mr. Henggeler agreed that the collateral stay posted, we will stipulate that.

The Court: There are some documents here on it, as I remember.

Mr. Gallagher: We will stipulate that that is the 1386 fact.

Mr. Burling: I do not by my silence mean to agree that that is the fact. I think Henggeler requested, not agreed.

As to these original documents which are now being marked, if Your Honor please, we are under an agreement to return the originals to Giuliani Brothers, and we therefore request a stipulation that we may withdraw the originals and substitute photostats for the record.

Mr. Gallagher: We have no objection that that, Your Honor. We would like a statement from Mr. Burling as

to where the documents have been returned; as a matter of fact, they have been obtained from Mr. Giuliani himself, his files?

Mr. Burling: Giuliani Brothers.

Mr. Gallagher: Do we understand that neither of the brothers are going to be witnesses? One is dead, I believe.

Mr. Burling: Edgar Giuliani is dead, I can't call him.

Mr. Gallagher: Is the other going to be a witness?

Mr. Burling: I don't believe so.

By Mr. Burling:

Q. I show you Government's Exhibit 99-A for identification and ask you if you can identify the stamp signature. Is it not Transdanubia Bauxit, Aktiengesellschaft?

A. Yes.

Q. And the date of this letter is April 15, 1942, is it not?

A. Yes.

1387 Q. And is it not the fact that the signature on the right-hand side of the two signatures is that of Georg von Krausz? A. I guess it is.

Q. Thank you.

Mr. Burling: I offer it in evidence. Your Honor, this refers to the shipment of bauxite dated April 15, 1942.

(Accordingly, the document above referred to was marked Defendant's Exhibit 99 and received in evidence.)

By Mr. Burling:

Q. I show you Defendant's Exhibit 100-A for identification, and ask you if it is not the fact that the signature, that the stamped signature is Transdanubia Bauxit Aktiengesellschaft, and that the right-hand of the two signa-

tures is that of Georg von Krausz. A. I am not so sure. It is very badly written. It might be. It starts with a "K".

Q. And is not the fact that the left-hand signature is that of Somogyi? A. I couldn't read it. I never saw the signature.

Mr. Burling: I offer this in evidence.

(Accordingly, the document above referred to was marked Defendant's Exhibit 100 received in evidence.)

1388. Mr. Burling: Your Honor, this letter to Giulini Brothers, dated April 20, 1942, reads:

"We have the honor of submitting to you herewith photostat of the official certificate concerning the analysis prepared by the Royal Hungarian Geological Institute of the 532,700 killograms of bauxite shipped by us in January of this year. Very truly yours, Transdanubia Bauxit, Aktiengesellschaft."

By Mr. Burling:

Q. I ask you to examine, Mr. von Opel, Defendant's Exhibit 101-A, on the letterhead of Transdanubia, and ask you if it does not bear the rubber stamp signature of Transdanubia, and if the signature on the left-hand is not that of Krausz. A. It looks to me like his signature.

Mr. Burling: This, if Your Honor please, refers to bauxite shipped "by us in the month of April, 1942."

(The document above referred to was marked Defendant's Exhibit 101 and received in evidence.)

By Mr. Burling:

Q. I show you Defendant's 102-A, and ask you if that is not a document written on the left head of Trans-

danubia, addressed to Giulini Brothers, dated October 30, 1942. Is not the signature on the right hand of that Krausz, and on the left hand that of Somogyi? A. 1389 I can see on the right-hand side a "k". He writes very badly. But it might be Krausz.

Q. And it bears the rubber stamp, Transdanubia Bauxit? A. Yes, I can read that.

Mr. Burling: Without reading the letter in detail, Your Honor, this again relates to bauxite production and shipments in July, 1942.

(The document above referred to was marked Defendant's Exhibit 102 and received in evidence.)

By Mr. Burling:

Q. Will you now examine Defendant's 103-A and state whether that is not written on the letterhead of Transdanubia, and has the rubber stamp signature of Transdanubia? A. Yes.

Q. And is it not dated March 18, 1943? A. Yes, it is.

Q. And addressed to Giulini Brothers? A. Yes.

Q. Is it not true that the signature on the right is that of Timar? A. Apparently.

Mr. Burling: I offer this, also. Your Honor, I would like to point out the second paragraph, which reads:

"Pursuant to negotiations carried on on October 13 and 14 in the office of Dr. Georg Ballay, Budapest, the 1390 following was agreed between you as lessee and us as lessor in partial amendment of the lease of March, 1940, and the subsequent agreements made."

By Mr. Burling:

Q. Mr. von Opel, does that refresh your recollection as to whether Transdanubia was the lessee or lessor of min-

ing properties in 1940? A. The last I heard was this letter of sales of March, '41. This letter is entirely new to me. But if you let me read it, I might be able to interpret it.

Q. Does that letter not refer to Transdanubia as being the lessee? A. Yes, apparently.

Q. Have you any explanation of that? A. No, I have not.

Q. I show you a letter which is Defendant's 104-A, and ask you if that is not on the letterhead of Transdanubia, bearing the signature stamp of Transdanubia, and signed by Krausz. A. It looks to me like his signature.

Q. The one on the right? A. Yes.

Q. And this bears a receipt stamp of June, 1944, does it not? A. June 6, 1944, yes. There must be—it says 1391 here, 1924, apparently a typographical error.

Q. The Giulini receipt stamp is June 6, 1944? A. Yes.

Q. And that refers to production of bauxite in the month of February, does it not? A. And to the chemical analysis, yes.

Mr. Burling: That is all.

Mr. Gallagher: Your Honor, I might point out in the record in the pre-trial conference, and in Defendant's contentions, and so forth, the time during which all this doing business was alleged by the Defendant to have taken place was in the period from the 'thirties up to '42. It seems to me we are now getting further afield all the time. They themselves so stated in the pre-trial statement.

Mr. Burling: My friend, I think, is mistaken as to what our statement was. We agreed that as a legal conclusion it does not matter what—I withdraw my statement.

What we were trying to do was to bring it up to the date of vesting, and I am told—I did not take part in the pre-trial conference—that what was said was at least until the date my friend referred to.

Mr. Gallagher: No, it does not say that, Mr. Burling.

Mr. Burling: In view of the fact that my friend has deviated extensively—

Mr. Gallagher: It states right in the pre-trial 1392 'proceedings, signed and taken before Judge Holtz-off, and signed by both parties, "Defendant claims that the plaintiff corporation was doing business in an enemy country, to wit, Hungary, from the middle 'thirties to 1942."

It seems to me we are getting further and further afield, and wasting more and more time on this thing.

Mr. Burling: Perhaps I could save time if I said I have come to the end of this line of proof.

Mr. Gallagher: Did the defendant sign this stipulation?

Mr. Burling: You swore to some interrogatories, too, that neither Fritz von Opel—

The Court: Gentlemen, let's try to get along with the testimony. I will give you an abundance of time to argue the case.

Mr. Burling: I am coming now, if Your Honor please, to a wholly different line of questioning, it has nothing to do with bauxite at all.

By Mr. Burling:

Q. Did you ever have occasion to talk to Mason Houghland on the transatlantic telephone? A. I don't remember that. If you refresh my recollection as to the date and time.

Mr. Burling: I believe I forgot to formally offer 103 and 104. I now do so.

1393 (Accordingly, the documents referred to were received in evidence as Defendant's Exhibits 103 and 104.)

By Mr. Burling:

Q. Shortly after—that is, within a week after September 18, 1939—did you have such a conversation with Mason Houghland? The week following September 18, 1939?

A. Do you mean a transatlantic call?

Q. Yes, I do. A. Between Switzerland and America?

Q. That is true. I will try to help you out. Were you staying at the Dolder Grand or Grand Dolder Hotel in Zurich? A. At this time, yes.

Q. And did you not receive a call from Houghland, who was in America? A. It is possible, I don't recollect it.

Q. Will you look at Defendant's Exhibit 105 and see if that is not a wire which you sent to Houghland on September 18, 1939? A. Oh, yes, I remember this wire.

Mr. Burling: I offer—

Mr. Gallagher: Just a moment, let us get a look at it, Mr. Burling. We don't have a copy.

Mr. Burling: I don't understand counsel's concern with a cable your witness says he sent.

1394 Mr. Gallagher: I am still asking to be permitted to see an exhibit before you offer it.

(The document was handed to Mr. Gallagher.)

Mr. Gallagher: No objection.

Mr. Burling: I now offer it.

(Accordingly, the document above referred to was marked Defendant's Exhibit 105, and received in evidence.)

By Mr. Burling:

Q. This telegram is addressed, Mason Houghland, care of Spur Distributing Company; signed, Fritz, Doldergrand, Zurich:

"Overseas Investors intend selling participation to meet other obligations. What I personally deeply regret. Please communicate Ulrich Shreveport who is informed accordingly. Intend to sail soon possible. Regards Fritz."

You sent this? A. Yes, I did.

Q. Who were the overseas investors who intended to sell a participation? A. At the time, as you know, the overseas stock was owned by about 15 different people, and I certainly after this set-up has cost me \$50,000 to maintain, just for such a purpose, I certainly on a transatlantic wire didn't say that I was the one who 1395 owned it.

Q. When you refer to some 15 owners, you are referring to this transaction that Dr. Frankenberg told us about yesterday? A. Yes, sir.

Q. The transaction which you heard me characterize as a fraudulent transaction. I am not asking you to agree with it, but we are talking about the same thing, are we?

A. If you talk about a fraudulent transaction, we certainly don't talk about the same thing.

Q. Well, the one which I characterize in questioning Frankenberg— A. Perfectly wrongly.

Q. Perhaps so, but it is the same transaction, at any rate. A. It was a full legitimate sale.

Q. We will come to that. That is what we are talking about, is it? A. Yes.

Q. When you say that it cost you some \$50,000, this transaction also saved you hundreds of thousands of dollars in personal holding company taxes, did it not? A. You are entirely mistaken.

Q. Finally, the Government caught up with you in 1941, but before that you thought you were saving hundreds of thousands of dollars in personal holding company taxes. A. How could I? 1396

Q. Did you not? A. No.

Q. In 1939 you had not filed a personal holding company return for '36, '37, or '38, had you? A. Let me explain this whole matter a little bit more.

Q. Will you just answer my question, and then you can explain with Mr. Gallagher. A. What was your question?

Q. In 1939, the day you sent this telegram, Overseas or Uebersee, had not filed, and you had not filed, a personal holding company tax return for any year since 1935, had you? A. I don't know—nothing about the matter. This matter was attended to by the accountants and Dr. Hengeler.

Q. Don't you know that no personal holding company tax return had been filed for those years? A. That is perfectly possible, but you—

Q. All right, thank you. The fact is, is it not, that these Swiss nationals that the Union Bank of Switzerland found, executed proxies to vote the shares as instructed by Frima, is that not right? A. That is possible.

Q. Is it not right? A. I couldn't tell you, I think they did that.

1397 Q. So they had no power to direct the investment of Overseas at all, personally, did they? A. No, this whole transaction was an escrow agreement.

Q. Were proxies to vote the shares or agreements to vote the shares running to Frima? Is that not right? A. That is possible, I don't remember this detail.

Q. You do not think that the Swiss nationals had any power to vote the shares in accordance with their choice, do you? A. I don't think so, no.

Q. I don't either. So when you said that Overseas investors intend selling—and by the way, the participation you referred to here is, you mean, the Spur stock held by Uebersee, do you not? Well, Hougland was the president of Spur, was he not? A. Yes.

Q. And you were not cabling him about something else, were you? A. I think he intended to buy the spur stock.

Q. But you understood that Overseas investors intend selling participation to mean other obligations? You meant

they intended to sell Spur Distributing, is that not right?

A. That is possible. At this time we were rather—

Q. Is that not what you meant, don't you know? A. It is not said in the cable.

1398 Q. I said, is that not what you meant, sir. A. I don't remember that. If you show me Mr. Houghland's cable, I can tell you, we can fit it together.

Q. Did Mr. Houghland cable you or did he telephone you? A. I couldn't tell you. Anyhow, we were in a rather unliquid position, and the creditors of Overseas, who had advanced me quite a lot of money, told me I should get in a liquid position.

Q. What you were talking about selling was Spur and not some other stock, is that not right? A. It was never my intention to sell Spur, because it was a very good investment, but Mr. Houghland made suggestions, and if he had offered a fair price, we might have accepted it.

Q. Did you not cable him on the 18th; "Overseas investors intend selling the participation to meet other obligations. What I personally regret"? Will you explain why you said that you deeply regret its doing something with respect to the Spur stock? A. Because I didn't want to indicate to him my financial situation.

Q. In other words, this cable was deliberately misleading, was it not? A. If you call that deliberately misleading, Mr. Burling, then the whole business life is deliberately misleading, all day long.

1399 Q. Your experience in business life is that people customarily lie to one another, is that right? A. Not at all, you see, but if you—

Q. Did you not lie to Mason Houghland when you told him that Overseas investors intended selling the participation, and that you personally regretted it? A. Do you think I should have told him that I—

Q. Did you not lie to him, I said. A. No, that is not a lie.

Q. Is it not a lie to tell him something that is contrary to the truth? A. Mr. Burling, do you really—if you deal—

Q. Will you answer my question, sir. A. I can't answer it this way.

Q. Do you know the difference between truth and falsehood? A. I think I know that very well, Mr. Burling.

Q. Was this cable true or false? A. If you want to sell—

Q. Was it true or false? A. How shall I explain it?

Q. Is it true or false? A. I can't answer this question.

Q. Can you answer any question truthfully? A. I think so, I try to do that all the time.

1400 Q. Have you in the courtroom? A. I try to do that all the time.

M. Ingoldsby: I object to this continued argument.

The Court: Sustained. We will adjourn until two o'clock.

(The noon recess was accordingly taken at 12:30 p.m. until 2 p.m.)

1402 FRITZ VON OPEL resumed the witness stand on behalf of the plaintiff and, being previously duly sworn, testified further as follows:

Cross Examination (Resumed)

By Mr. Burling:

Q. Now, during the noon recess have you been able to refresh your recollection that shortly after September 18, 1939, you received a trans-Atlantic telephone call from Mr. Houghland concerning the possibility that the Spur shares would be sold? A. I don't recollect this call, but it is possible that he called me.

Q. Didn't Mr. Houghland say to you that he was very surprised because he thought you were enthusiastic about the Spur shares? A. That is possible.

Q. And didn't you say to him that you agreed and regretted the decision to sell and, in fact, had done everything you could to prevent the sale? A. No, that is not quite a correct statement.

Q. In fact, didn't you tell Mr. Houghland that your father insisted upon the sale and that you could do nothing to change his mind? A. My father had nothing to do with the matter.

Q. Whether he did or not, isn't that what you told Mr. Houghland? A. No; definitely not.

Q. You are sure of that? A. Definitely. That would be fully inconsistent with my wire to Mr. Houghland.

Q. Your wire didn't correctly state the fact, did it? A. Yes.

Q. Did it? I thought you agreed that you could not say whether the wire was true or false before lunch? A. I can say this way, Mr. Burling. As you know, I was in an unliquid position, and if you want to deal with someone, you don't disclose your weak position.

Q. But the wire says investors who intended selling Spur stock? A. No.

Q. Your wire says practically that doesn't it? A. Investors. It might have been better to say creditors.

Q. What creditors are you talking about? A. I am talking about those people who lent me money.

Q. Who were they? A. For instance, the Adler Bank. I owed money to the Adler Bank and the Nashville Bank. I owed money in Shreveport.

Q. Did they insist you sell the Spur stock? A. No, they didn't insist on selling the Spur stock. They told me to get into liquid position.

There was no special sale in their mind. They wanted me to get out of unliquid position. I didn't sell Spur but some other property.

Q. What did you sell? A. Some oil property.

Q. As a matter of fact, the oil properties were in bankruptcy at this time, weren't they? A. Oh, no.

Q. No? A. No, no; you are mistaken.

Q. Weren't your oil properties consolidated in 1405 Hurricane Oil Refinery? A. That was the refinery I had there.

Q. That is where your oil lands and oil wells were, too? A. Oh, no.

Q. Nothing went into Hurricane except the refineries; is that your testimony? A. If I remember, Hurricane was—I don't know whether anything was consolidated into it. As far as I remember, only the Shreveport properties went into it.

Q. And the Nashville Bank loan wasn't made until 1940, was it? A. I think there was a loan against the collateral of—you are speaking about Nashville?

Q. You said that the Nashville Bank requested you to get in a liquid position in September, '39.

I asked you if it wasn't true that you borrowed money from the Nashville Bank in '40? A. That is possible; yes.

I had borrowed money from the Adler Bank, and I think also in '39, because it has been years ago, and I think I already had borrowed \$200,000 from the bank in Shreveport.

Q. But you referred a moment ago to a Nashville bank. That was in error, you realize that? A. That is in error; yes.

I was in unliquid position at that time.

1406 Q. Didn't you state to Houghland on the phone, shortly after September 18, 1939, that although you had some say in Overseas management, the real control and management was your father's? A. I never made such statement.

Q. You are sure of that? A. Definitely.

Q. Didn't you also state that your father had directed Frankenberg to sell the Spur stock? A. I never made such statement.

Q. You are sure of that? A. Definitely.

Q. Didn't you tell Mr. Houghland on the trans-Atlantic phone that you were trying to get your father to agree to give him an option on the stock for a short period? A. No; I never made such statement.

Q. Didn't you agree? A. (Interposing) And by the way, Mr. Houghland had an option. He had a right of refusal since '32 and '33.

Q. A right of first refusal, is that the same thing as an option? A. What do you mean by option?

Q. I don't know. What do you mean? You used the word. A. You asked me about option.

1407 Q. So I did. I am wrong.

Don't you know what an option is, Mr. von Opel?

A. An option gives somebody some rights to exercise or not exercise.

Q. At a fixed price? Isn't there a difference between a right of first refusal and option? A. I think it is.

Q. Now, do you recall telling Mr. Worthington in the course of the New York interrogation, and I am reading from page 84, and I am now back to the same proposed sale of Spur stock in September of '39:

"As I recollect, it was Dr. Frankenberg who said: 'Wouldn't it be wise to get into a better cash position and sell one of the properties, but we never pressed the matter and nothing came out of it'?"

A. That is possible. I told you the Adler Bank had given me some loans, and Dr. Frankenberg was advising me financially.

Q. So Dr. Frankenberg was pressing you to sell the Spur stock? A. You can't say pressing.

Q. But he was pressing you to sell the stock? A. No, not pressing.

Q. Well, he was insisting? A. He was only concerned with Spur, with my liquid or cash position, so to 1408 say.

Q. Didn't you tell him that you agreed to give Houghland an option on the Spur stock at this time? A. That is possible. I can't recollect the details. I think Mr. Houghland wanted an option.

Q. How did you learn he wanted an option? A. He must have wired me.

Q. How do you know he must have wired you? How do you know he didn't telephone? A. Because usually I didn't telephone.

Q. Don't you know, Mr. von Opel, that the long distance telephone records from your Palm Beach house in Florida show you made 105 long distance calls in the six-month period ending in May, 1941?

Mr. Gallagher: Do I understand you mean trans-Atlantic calls?

Mr. Burling: Long distance.

Mr. Gallagher: There is a big difference. I wish you would clarify that as to which you are discussing.

By Mr. Burling:

Q. In the six-month period ending May, '41, didn't you make 12 trans-Atlantic phone calls? A. Trans-Atlantic phone calls?

Q. Yes. A. I don't recollect that.

1409 Q. Didn't you make calls to Wiesbaden, Budapest, Zurich, and London? A. That is entirely out of my mind, and I rather doubt that very much, because normally I don't use the trans-Atlantic telephone because you could communicate much cheaper by wire or cable.

Q. Did you have a cable from Mr. Houghland in which he asked for an option? A. About which time are you speaking now?

Q. September, '39, sir. A. Well, in between you spoke about Palm Beach.

Q. That was with reference to your habit of using the trans-Atlantic telephone.

I am going back now to September, '39. A. You want to know in which Mr. Houghland communicated with me?

Q. That is right. A. I don't remember.

Q. Are you certain he didn't talk to you on the trans-Atlantic phone? A. I never said it was perfectly certain.

Q. Are you now? A. It is possible but I am sure I didn't call him.

Q. Mr. von Opel, it is unnecessary to waste so much time every day in discussion.

1410 I have asked you: Don't you remember that he called you? A. I told you I don't remember.

Q. Now, was it your intention to sell Spur stock? A. No. I considered it a very good property and I wanted to keep it.

Q. Why did you send the wire to Mr. Houghland then, Defendant's 105? A. Because if Mr. Houghland would have made a good offer, I might have sold Spur.

Q. That does not invite an offer from Mr. Houghland to sell Spur? A. No. Mr. Houghland wanted to buy it, you see, and I indicated to him that I would be willing.

Q. You think Mr. Houghland indicated to you before you sent the wire that he wanted to buy the stock, is that your testimony? A. I don't recollect these details. I only—

Q. (Interposing): That is not just a detail. Isn't it important whether you tried to sell the stock or Houghland first tried to buy it? A. I think it started—I am not sure about the detail, but I think it started with Mr. Houghland expressing the wish to buy.

Q. You think first Mr. Houghland expressed the wish to buy and then you sent the wire to him; is that your testimony? A. I am not sure about this detail.

Q. Is it your best recollection that that is the way it was? I understand you are not sure. What is your best recollection? A. It is so long time ago and nothing came out of it, I really don't remember it.

Q. You have been interrogated about this time and time again? A. About the wires?

Q. Yes. A. This one wire I was shown in '46 in New York.

Q. And you have tried to recall this transaction, have you not? A. I cannot recall.

Q. You don't know whether Mr. Houghland first communicated with you or you sent a wire? You don't know which was first? A. No, I don't.

Q. And you have no opinion as to which is more likely? A. No, I could not tell you.

Q. Now, in 1941, you saw Mr. Houghland again, did you not? A. In which part of the year?

1412 Q. Did you at any time in the year 1941 see Mr. Houghland again? A. Oh, yes. He phoned me and wanted to see me in the beginning of the year.

Q. Did you see him? A. Yes; I think he asked me.

Q. Did you see him? A. To meet him in Savannah. I saw him several times in Savannah.

Q. In '41 you saw him several times? A. I think I saw him in Savannah, and I think I saw him in New York.

Q. In '41 in New York? A. That is what I recollect right now.

Q. I show you Defendant's Exhibit 106 and ask you if this is a copy of a letter you received from Mr. Houghland?

I wish to show it to your counsel first.

By the way, do you see Mr. Houghland in the courtroom?

A. Yes.

Q. He is the gentleman sitting inside the rail on the right? A. Yes.

Q. Will you look at Defendant's 106 now and state

whether or not you received that shortly after 1413 January 13, 1941. A. Yes.

Mr. Burling: I offer it in evidence.

(The document referred to was marked and received in evidence as Defendant's Exhibit 106.)

By Mr. Burling:

Q. Look at Defendant's 107 and state if that is not a letter in your handwriting in which you wrote to Mason Houghland? A. Yes.

Mr. Burling: Thank you.
I offer that in evidence.

(The document referred to was marked and received in evidence as Defendant's Exhibit 107.)

By Mr. Burling:

Q. Now, Mr. Houghland indicated to you that he wanted to see you and discuss a matter of business? A. Yes.

Q. Will you state what the discussion was in the DeSoto Hotel in Savannah, Georgia? A. He was very much concerned about the general political situation, and he asked me what would happen to Spur in case of war would break out.

Q. What did you say? A. And I told him, he need not to worry. These were my worries and not his.

1414 Q. What else did you tell him? A. He started to dig into me, and he wanted to know a lot of personal, about my personal affairs, and I got somewhat suspicious about all these questions.

Q. Will you state what the questions were, please? A. He wanted to know who was behind Overseas, and also things which were no concern of his.

Q. Just go on and tell us as fully as you can what Houghland said to you in Savannah in January, '41? A. I can only give you general impressions. I was under the impression it was the questions he asked me were none of his business.

Q. I didn't ask you— A. (Interposing) Nothing to do with the operation of Spur.

Q. I didn't ask you your impression of his questions. I asked you to state them as fully as you can remember. A. I don't recollect anything, any single word of it.

Q. You have no recollection of any addition to what I have just asked you; is that correct? A. He started digging into me, and he wanted to know where the stockholders of Spur were, of Overseas were.

Q. Did he ask you anything else? A. No; that was the main question, and I got suspicious about this insistence because I had been warned previously against Mr. 1415 Houghland's loyalty. I gave him some wrong explanations.

Q. State what the wrong explanations are. A. I told him that Overseas was owned by some South Americans.

Q. And that was a lie, was it not?

Mr. Ingoldshy: Just a second. I object to that characterization of the statement.

The Court: Was it true or not, he asked him. I shall permit that.

The Witness: It was what you call a bum steer. I wanted to find out because I had no business dealings whatsoever in South America, and I knew that if this name South America would have come out that Mr. Houghland gave me away, and it came out through the FBI exactly a year later.

By Mr. Burling:

Q. In other words, will you agree Mr. Houghland was loyal to his country, rather than to you?

Mr. Ingoldsby: I object to that.

The Court: I think that is argumentative.

Mr. Burling: It is withdrawn.

By Mr. Burling:

Q. Now, as a matter of fact, some 36,000 shares of Harvard Brewery belonging ultimately to Uebersee was put down in this Monte Franco Company, wasn't it? A. No; this is entirely incorrect, Mr. Burling.

Those shares belonged to my wife, and they were when Adler—in Switzerland, when the people feared the Germans might enter Switzerland, Adler transferred a lot of their securities to their South American company.

Q. You say it wasn't Uebersee's? It belonged to your wife? A. Yes.

Q. How did she acquire them? A. I had given them to my wife.

Q. When did you give them to your wife? A. I don't remember the exact time.

Q. Did you ever file a gift tax indicating you gave the South American securities to your wife? A. That was done in Switzerland, and these shares, Mr. Burling, weren't kept in the name of some South American corporation, as you say, but were kept on my wife's account with Bleichroeder in New York, and there they were in New York.

If my wife had tried to hide something, she would not have left these shares right there for everybody to see.

Q. Now, going back to your conversation in the DeSoto Hotel in Savannah, Georgia, with Mr. Houghland, you didn't tell him at that time you were the beneficial owner of Uebersee and that you were a Liechtensteinian national, and hence would be a neutral, did you?

A. It is possible that he asked me about my citizenship.

Q. But you didn't say anything to him about, even if war between Germany and the United States would break out, you were the beneficial owner, and you would be a

neutral, did you? A. You are asking me two questions at once. Let me answer the first one first.

It is possible that I told him that I was a Liechtenstein citizen.

Q. Of course, it is possible that you did, but did you? A. I don't recollect that.

Q. You have no recollection of having said that to him? A. It is absolutely possible I told him.

Q. Of course, it is possible. It is possible you told him that you were a Chinaman, but what did you tell him?

A. If he asked me, I think I have given him an answer.

Q. Did he ask you? A. I don't recollect whether he asked me.

Q. Now, the second part of the question: You didn't say to him that if war between Germany and the United States would break out the Uebersee shares would be neutral because you would be the beneficial owner, and you were a neutral? A. To be an absolutely correct
1418 explanation, I don't recollect whether we went into this matter.

Q. You have no recollection that you did, do you? A. That would be in contrast to what I thought previously. I think I told him that some South Americans were interested in it.

Q. Now, as a matter of fact, in '39, Uebersee had invested about a half million dollars in Argentina, hadn't it? A. No, sir; you are badly mistaken.

Mr. Burling: I ask a concession that Defendant's 108 is a photostatic reproduction of a book of account of the plaintiff corporation.

Mr. Gallagher: If you say so, Mr. Burling, we are satisfied.

Mr. Burling: Thank you.

By Mr. Burling:

Q. I show you a book which bears the title, the translation of which appears as participations and securities.

Do you recognize that volume? A. Not right now.

Q. It is conceded by your counsel to be a photostatic reproduction of an account book of Uebersee Finanz-Korporation. The title of the book is Uebersee Finanz-Korporation, Limited, Liestal, and the English words, participation and securities.

Now, I open this.

1419 Mr. Ingoldsby: What are you attempting to prove by this book?

Mr. Gallagher: With respect to our concession, let us have it straight so that I don't put you on a wrong track.

Dr. Kaufmann is in back. I don't know if it is his book or personal, but we concede you got the book from us.

Mr. Burling: Thank you.

By Mr. Burling:

Q. I am going to show you the page which refers to Argentinian participation, and open the book to that page and hand it to you and ask you to state the meaning of the entry which I have just shown you. A. Without seeing the connecting sheets, that is lined out or crossed out, as you see, so that doesn't mean a thing.

Q. It doesn't mean anything? A. No.

Q. What did it mean before it was crossed out? A. As far as I remember at this time, some Swiss banking group wanted to give me a loan or credit of about \$300,000.

Q. State what date? A. It wasn't an investment of mine in Argentina. I hadn't any money at the time.

Q. Translate the words at the top of the page. A. It means participation, Argentina.

1420 Q. What does the top word mean? A. Participation.

Q. Would you explain what these entries mean, if you can read them? A. They are lined out, Mr. Burling.

Q. I understand that. A. But without seeing the connecting sheet—

Q. (Interposing). You may look at the connecting sheet. Please do so. A. How can I from one sheet?

You asked me about one sheet and you asked me yesterday about this income of 2.6 million dollars, and then I went into this matter what you gave this time, but you didn't ask me on this.

It was not in a book of Overseas but a question of testifying about that it was my personal book. It wasn't a book of income.

Q. Do you mean that your counsel— A. (Interposing) Or division of assets.

Q. Do you mean that your counsel delivered under a court order requiring him to produce books and records of the Uebersee Corporation, and they delivered to us an account book of yours personally; is that your testimony?

A. No, Mr. Burling.

You wanted the books of Overseas and now my 1421 private accounts are sent.

Mr. Burling: We didn't ask for them.

Mr. Gallagher: You just got them. That was the point.

Mr. Burling: We were not told that until just now.

Mr. Gallagher: We weren't either.

The Witness: I was checking the matter. I could not answer you.

By Mr. Burling:

Q. What is this entry? A. It shows I had been given a line of credit of \$300,000 by a group of Swiss bankers, and I had a line of credit against which I had pledged the Spur stock as their collateral until the end of '39.

Q. What did you intend to do with the credit in Argentina? A. That has nothing to do with Argentina.

Q. I thought you got the line of credit in Argentina?
A. Yes.

Q. What did you intend to do with the credit in Argentina? A. You misunderstood me. I went to a group of Swiss bankers which had gotten together and had given me a line of credit, and I told you I was rather unliquid at the time, and I needed money, and so they loaned me the money against several collaterals, and among these collaterals were Spur and Harvard shares.

1422 Q. Will you explain what the credit in Argentina was to be used for? A. There was no credit in Argentina.

Q. Where did Argentina come into the picture at all? Just explain it. A. I tried to explain to you. It was a Swiss banking group, and they have, some of these bankers had participation in Argentina, and I wanted credit, and they gave me a credit, an Argentine credit, or something of this sort.

It was a group of Swiss bankers and it had nothing to do with Argentina. It was a loan of \$300,000 credit which I had for four or five months, and which was cancelled.

Q. And that is why the line is drawn through the page?
A. I could not tell you without checking on the relating sheets first.

Q. Is it customary in Swiss business practice to record credit extended to you in inventory of participations and securities? A. I could not answer that, but I will gladly go into it and show you the corresponding sheets.

Q. But you have at the moment no better explanation of what that entry is doing in the book? A. I am not a bookkeeper, Mr. Burling. I only can state you the principal facts.

1423 Q. Now, on this occasion in the DeSoto Hotel in Savannah, in January, '41, did you have any further conversation with Mr. Houghland? A. If you refresh my recollection.

Q. Did you tell him— A. (Interposing) We talked for several hours.

Q. Did you tell him that you were thinking of acquiring a yacht or sea-going boat? A. In '41? Yes, I think I was interested in yachting.

Q. The question wasn't what you were interested in, but what you told Houghland.

You did tell him something about a yacht, didn't you? A. It is possible.

Q. Didn't you show him navigational charts of the Atlantic Seaboard of the United States? A. I think I intended to sail—

Q. (Interposing) I didn't ask you what you intended. I asked you: Didn't you show charts to Houghland?

Mr. Gallagher: I can't see the relevancy. I think we are getting into irrelevant matters.

Mr. Burling: It is not irrelevant if you permit me to go on for two more questions, and I will show you the relevancy.

Mr. Gallagher: You could go on for half an hour and it is still irrelevant.

1424 Mr. Burling: I am coming to a relevant point almost immediately.

The Witness: I was sailing at the time in Florida.

By Mr. Burling:

Q. I didn't ask you what you were doing. You were in the DeSoto Hotel at the time I was talking about. A. Yes! Pardon me, but you were asking me about navigational charts.

Q. I asked you if you didn't show navigational charts to Houghland? A. It is possible.

Q. Did you? A. I don't recollect, sir. It wasn't anything of any importance.

Q. Well, is it not a fact that Mr. Houghland stated to you in words or substance as follows;

You ought to get rid of these charts; after all, Fritz, you are a German, and if we go to war with Germany and you are found in possession of these navigational charts, it might get you into trouble? A. I don't recollect that, but it was possible that Mr. Houghland made the statement.

Q. You have no recollection of that? A. No.
1425 — I kept those charts in New York in my apartment, and nobody ever objected to it.

You could buy them everywhere for 25 cents all during the war.

Q. Well, in any event, if Mr. Houghland did make that statement, you didn't correct him and say: I am not a German; I am a Liechtensteinean national? A. Now, just a minute ago you asked me whether he asked me, whether Mr. Houghland, whether I was a Liechtensteinean citizen, and I said if he asked me, I answered him so.

Now, all of a sudden, he asked me whether I am a German. That is contradictory; and certainly if he would make such a statement, I would have objected to it.

Q. But you have no recollection of objecting? A. I may have said—

Q. (Interposing) Please will you answer the question and not make a speech.

You have no recollection of having told Mr. Houghland: You are wrong; I am not a German; I am a Liechtensteinean? A. If Mr. Houghland—

Q. (Interposing) Will you answer the question? Do you have any recollection of having said to Houghland: You are wrong, Mason; I am not a German; I am a Liechtensteinean? A. If I must—

1426 Q. (Interposing) Do you have any recollection of that, sir? A. Pardon me.

Q. Do you have any recollection of that? A. I only—

Q. (Interposing) Do you have any recollection, and I do not want to know your hypothesis.

Do you have any recollection now in your mind? A. I don't recollect that Mr. Houghland made such statement.

Q. And so— A. (Interposing) If he made the statement—

Q. (Interposing) Please stop. You are required to answer the question.

—You have no recollection presently in your mind that you made any such statement to Houghland, do you? A. No, I don't remember.

Q. Thank you.

Is that meeting in the DeSoto Hotel not the last time you saw him until you saw him in this courtroom? A. No, I don't think so.

Q. Will you state where else you think you saw him? A. If I am not mistaken, I saw him in New York afterwards.

Q. What happened on that occasion? A. I think 1427 that was at the occasion of some directors meeting, if I am not mistaken.

Q. Do you remember when that took place? A. I think it was then twice. I remember, anyhow, I remember an incident in New York which took place in the office of my accountants, Bayer & Clauson.

Q. Will you state the incident, please? A. The Spur Corporation had filed a record with the Treasury, had to file a report with the Treasury stating the names and nationalities of the officers and directors of Spur Corporation, and in this list of stockholders or, rather, officers and directors, one of the board members, a certain man by the name of Ulrich, who was an American citizen for 30 or 40 years, they answered this question by saying, nationality unknown.

Behind my name, instead of saying, Liechtenstein citizen, they answered, traveling on Liechtenstein passport, and furthermore, without being asked about it, they had added that I possessed huge, or considerable or big interests, in Germany, and that my family or parents and my sister was living in Germany.

About this report to the Treasury, I raised hell there in the office of Bayer & Clauson in the presence of Mr. Houghland, and told him how he would let go such a report by the Spur Corporation, and he begged my pardon. 1428 He didn't do it, he said, and it must have slipped through Mr. Ryan's, who did it, and I didn't believe that at this time because Mr. Ryan knew even less about me than Mr. Houghland.

Q. And that was the last time you saw Mr. Houghland until now? A. It is possible that there was another meeting on account of bonns, or so to be paid some time later. I don't remember exactly when this meeting took place about which we are speaking now, whether that was in the summer of '40 or '41. I think it was in '41.

Q. Now, coming to another topic, you recall that the Miami hearing board questioned you at great length about your trips into Germany after you left Germany; is that right? A. Yes.

Q. And you understood that they were trying to tell the degree of relationship that you had kept up with Germany, isn't that right? A. Yes, and don't overlook one thing, Mr. Burling. All my records and files have been taken, and I was unable to reconstruct—

Q. (Interposing) The answer to my question is yes.

If you want to make argument, you can ask your lawyer who is there to argue for you. Please don't argue 1429 with me. A. I am trying to be cooperative.

Q. Specifically, isn't it true that the hearing board asked you about trips which you made to Germany after proceedings against your father were settled? Isn't that so? A. I don't recollect it.

Q. I will read to you from page 89 of the Miami record, referring to the settlement of proceedings, and weren't you asked this question:

"Question: I believe you said you came into Germany a couple of times after that?

"Answer: Yes; after the matter was settled.

"Question: That was after 1938?

"Answer: After thirty—it was settled in 1935.

"Question: You mean you went on hunting trips?

"Answer: I was, I think, hunting with my father. He had this estate, and he asked me to do away with some deer on it, and I shot about 15 or 20 deer from the estate."

Now, do you recall that testimony?

Mr. Gallagher: Which hearing is that?

Mr. Burling: It is the Miami hearing.

Mr. Gallagher: There was more than one.

Mr. Burling: There is only one Miami hearing of which you or I have record.

Mr. Gallagher: There was also one in 1942, and one in the fall of '43, of which we have copies. In addition, there is one that is missing, and we don't know what was asked or stated at that hearing.

Mr. Burling: May I state to the Court: We were required by Judge Holtzoff to produce all the portions of the alien enemy hearing file that we intended to use in the trial, and we complied with that, and counsel have asked us in open court and privately, and we have repeatedly told them we do not have any more files, and we cannot give them those we do not have. They are in possession of all the hearings. Of course, we have our Department of Justice memorandum, but all the hearings we are in possession of have been furnished to counsel.

Mr. Gallagher: I accept Mr. Burling's word and it is not quibbling with him, but I wish to keep before the Court that there was a hearing held at which questions and answers were elicited that nobody knows what was stated or what was answered, and we want the record to reflect that.

By Mr. Burling:

Q. No, didn't you go on, after referring to the shooting of these deer, and state that you had made a trip to Kampen, and that you were visiting a lawyer there, a lawyer of mine, Mr. Gros? A. Yes.

Q. That is Dr. Gros, who is sitting in the court-1431 room today? A. Yes, sir.

Q. Were you visiting him in Kampen or was he visiting you? A. I think he was at the seaside.

Q. I didn't ask you about the seaside. I asked you were you visiting him or was he visiting you? A. I went there for a business discussion with him.

Q. Please answer my question. I didn't ask you why. I said: Was he visiting you or were you visiting him? A. I was visiting him, but he had no house there. He was living there and I went there and talked with him.

Q. But you or your wife did have a house there? A. My wife had a cottage, a two-room cottage.

Q. Where was Mr. Gros staying? A. He was staying five or seven miles or so from us, in Westland.

Q. And you were staying with your wife, weren't you? A. Yes; for several weeks.

Q. So you were misleading the Miami board, were you not, in stating you went to visit Mr. Gros when you, in fact, were staying in the house rented by your wife? A. Mr. Burling, there I expressed my intention to go to Westland to meet Mr. Gros.

Q. But you omitted telling the hearing board that you were not visiting Mr. Gros but staying in the house 1432 rented by your wife; isn't that true? A. I thought that was of no importance, however.

Q. You didn't think the hearing board wanted to know, after you had left Germany, that your wife was renting a house there? A. I thought it was brought out in the hearing that she was.

Mr. Gallagher: I want to make a point in connection with the questions and answers elicited, Your Honor. We are well aware that these enemy alien hearings are ex parte and star chamber proceedings, and we don't know how the word visit was defined.

Mr. Burling: Perhaps so, but he should ask that on further redirect examination, or on argument to Your Honor.

I should be permitted to bring out any additional facts that there are in the record of concealment and deceit on the part of this witness concerning his trips to Germany in the proceeding.

By Mr. Burling:

Q. Now, going on, didn't you tell the Miami board that the remaining time you were in Germany was in '39 when you visited your father in Wiesbaden? A. I guess so, if that is in the record.

Q. And the fact is that you were in Germany at least once in every year between '33 and '39, inclusive? 1433 A. I told you before that.

Q. Isn't that the fact, sir? A. That is possible.

Q. I didn't ask you about possible. A. Now, I have to get my file.

Mr. Gallagher: I am having difficulty following Mr. Burling's questions myself, and I don't want to annoy him, but this statement he is talking about, it is the settlement and the time his father had paid the fine.

Mr. Burling: Is counsel making an objection?

By Mr. Burling:

Q. I am asking if it is not a fact in every year from '33 through '39, inclusive, you were not in Germany at least once? A. That is possible.

Q. I didn't ask you if it is possible. Don't you know it to be a fact? A. If you want to know that, I will be pleased to tell you that now after.

Q. Don't you now know the facts? A. I now know the facts.

Q. Isn't it a fact that you were in Germany every calendar year from '33 to '39, inclusive? A. I think I was.

Q. Thank you.

1434 Now, during the period from January 1st, '33, to December 31st, '39, you were frequently in Germany for fairly long periods of time, were you not? A. No.

Q. How many visits did you make to Kampen during this period? A. I don't recollect that.

Q. Didn't you make visits on at least four separate summers, visits lasting between two and six weeks? A. No, I don't think so.

Q. What is your best recollection how many visits you made to Kampen and how many days you stayed there? A. I don't have any record showing that and no possibility of checking it, except going through this file of Overseas.

Q. Haven't you done that? A. And out of this file I try to reconstruct, and I have done it very thoroughly where I have been from the time I left Germany until the time I arrived in the United States.

Q. All right. If you have done this thoroughly, tell us what the facts are and figure out as closely as you can—

A. (Interposing) Based upon these records, where I have been?

Q. Tell us what the facts are, won't you, please?

1435 A. The facts are that all this time from my leaving Germany until the outbreak of the war, I was in Switzerland 35 per cent of the time.

Q. Thirty-five per cent of the time? A. Yes.

Q. What per cent of the time were you in Germany?